

**NOTICE OF MEETING
VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING**

SCHWEMER HALL - MUNICIPAL BLDG.
7200 N. SANTA MONICA BLVD.
FOX POINT, WISCONSIN

WEDNESDAY
SEPTEMBER 28, 2022
5:00 P.M.

AGENDA

- 1. Roll Call**
- 2. Approval of the Minutes and Determinations – July 27, 2022 Meeting**
- 3. Case 2022-09: 7834 N Beach Dr.** The applicant is requesting a variance pertaining to Section 745-13 B. (3) of the Fox Point Village Code in the A1 Residence District, concerning side yard setback requirement of not less than 20 feet. The request also pertains to Section 756-34 B., Exterior Structures regarding the installation of a generator. The applicant is proposing to install a generator up to the property line.
- 4. Case 2022-10: 8339 N Lake Drive.** The applicant is requesting a variance pertaining to Section 745-16 B. (2) of the Fox Point Village Code in the B Residence District, concerning a 70-foot setback from the centerline on Dean Road. The applicant is proposing a new addition to the home to be approximately 10.33 feet into the 70-foot Dean Road centerline setback.
- 5. Case 2022-11: 8027 N Navajo Road.** The applicant is requesting a variance pertaining to Section 745-17 B. (4) of the Fox Point Village Code in the C Residence District, concerning rear yard setback requirement of not less than 10 feet. The applicant is proposing to install a new garage 6.2 feet from the rear property line.
- 6. Adjourn**

PLEASE NOTE: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through sign language interpreters or other auxiliary aids. For additional information or to request these services, contact the Village Clerk at (414) 351-8900. It is possible that members of, and possibly a quorum of members of, other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice.

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A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Wednesday, July 27, 2022 at 5:00 p.m. The Village Clerk took roll call. Those present included:

Nancy Filsinger, Chairman
Thomas Dunst
Mark Grady
Scott Ratke
Adam Bazelon

Staff members also present were Village Attorney Luke Martell, Building Inspector Michael Rakow, and Village Clerk Treasurer Kelly Meyer.

Notice of the meeting was provided to the North Shore Now, to all others as required by State open meetings laws, Village ordinances and posted on the official bulletin board and the village website.

Approval of Minutes of May 19, 2022 Meeting and the Findings of Fact, Decision and Order

Motion by Member Thomas Dunst, Seconded by Member Scott Ratke, and carried by roll call vote (4 - 0 - 1, Member Grady abstained) to approve the May 19, 2022 minutes and the Findings of Fact, Decision and Order of the last meeting, as presented.

Case 2022-04: 940 E Wye Lane. (Continuation of May 19, 2022)

The applicant is requesting a **variance** pertaining to Section 745-13 B. (3) of the Fox Point Village Code in the A1 Residence District, concerning side yard setback requirements. A side yard setback of not less than 20 feet from the side yard setback shall be provided for each side of every building. The request also pertains to Section 756-34 B., Exterior Structures regarding the installation of a generator. The applicant is proposing to install a generator approximately 17 feet from the property line.

Village Attorney Luke Martell reviewed Board of Appeals acts as a quasi-judicial body and the Board decision and determination is to apply local law and ordinances. The Board cannot ignore the law and ordinances; the Board is not here to changes the local laws and ordinances. The Board is just here to apply. The standard for variance is pretty high. Variances are something that goes against village ordinances. The applicant must show that their property meets three standards.

1. Unnecessary hardship
2. Due to conditions unique to the property
3. There is no harm to the public interest if the variance is to be granted.

The Board should keep the standards in mind and provide the reasoning for each one of those standards when you make your decision.

Village of Fox Point Building Inspector Michael Rakow

Building Inspector Michael Rakow stated his name and was sworn in to provide testimony by the Village Clerk Treasurer.

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Building Inspector Michael Rakow gave background on Case 2022-04, stating the applicant would like a variance concerning side yard setback requirements to install a generator approximately 17 feet from the property line in the A1 district with a side setback of 20 feet. The side yard setback should be 20 feet and the generator would be inside that setback area. approximately 3 feet. Therefore, it was denied due to noncompliance with regard to the side yard setback.

Member Mark Grady inquired if the Building Inspector Michael Rakow was out on the property, do you have an opinion of whether there is a different location then where it is proposed that would still meet the set back requirements. Building Inspector Michael Rakow stated they can put it anywhere else if it meets the setbacks without a problem, but they are requesting the proposed location as submitted.

Member Adam Bazelon stated that it looks like from the diagram, it could be placed behind the home and still be in compliance with the setback. Is there any reason it is not being placed in that location? Building Inspector Michael Rakow stated it could be placed there and again, it could be placed anywhere that is compliant with the setbacks, but again the applicants are proposing that the generator be placed in the location provided in the application.

Owner Kristie Kosobucki

The Owner Kristie Kosobucki stated his name and was sworn in to provide testimony by the Village Clerk Treasurer.

Owner Kristie Kosobucki commented she was out of the village for the first meeting and will now try to provide a better picture. There were some questions that weren't answered and she is hoping to provide some clarification.

Owner Kristie Kosobucki stated that they were without power a couple of days last summer. She needs to have consistent power at the house for some other reasons. They looked into a generator and they have been doing some remodeling. The old site plan that was originally included with the packet doesn't show the updated window and door situation at the house. There is a letter submitted from Adams Generator explaining that the generator cannot go within a certain place by the window or door because of the exhaust fumes. It needs to be further away from the house from any opening to the home; this includes AC, venting, windows or doors. There is an updated plan [Exhibit A] that may not have been submitted. She passed Exhibit A around to the Board members. There was an updated photo sent that shows if it were to go in the back yard, it would be in the middle of the yard. The reason Adams Generator stated that is the way to go is because we have a chimney right there and it juts out, so they are able to keep it close to the house. They would still have the five-foot clearance for the exhaust issue from any window or door in that location. The other option was to put it on the west side of the home by the garage which definitely would be great if they were going to keep it there. Next year they are planning a remodel with an addition in that location, so it is not financially responsible to spend money to put the generator in that location and come back next year to have the same discussion with the Board. That addition will be a sunroom with all windows and doors.

Member Scott Ratke inquired how often will the generator cycle. Owner Kristie Kosobucki stated it runs a test cycle every 30 days. The neighbors to the east have a

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generator on our side of the home as well, so it is not really a noise issue. She offered to play the video of them standing in the driveway on the west side when the neighbors generator turned on when they lost power a couple of weeks ago. When their generator is on, our generator will most likely be on.

Chairperson Nancy Filsinger inquired if the rendering that was given to them [Exhibit A] is a future home rendering. Owner Kristie Kosobucki stated that is the rendering for the current design of their home, stating they are just in the beginning phases of the remodel. That does show the updated window and door configuration.

Chairperson Nancy Filsinger inquired where the generator would be placed if it was in the backyard. Owner Kristie Kosobucki clarified the area the generator would have to be placed if it were placed in the back yard.

Member Mark Grady stated apart from the picture that you gave us [Exhibit A], apart from the generator being more in the middle of the backyard, are there any other hook-up issues that would keep you from placing it in that location. Owner Kristie Kosobucki commented there is power, but they would need to run the gas line and she was unsure how expensive that would be because it would have to cross some concrete. Owner Kristie Kosobucki stated the gas line is on the northeast corner of the home.

Member Scott Ratke inquired if she has any special circumstances, as she mentioned earlier. Owner Kristie Kosobucki stated she does have special circumstances that are medical.

Member Mark Grady stated that where the proposed location is the setback encroachment is possibly three feet. Owner Kristie Kosobucki stated that is correct, but it is also about 30 feet from the neighbor's home.

Member Mark Grady stated to key off on Village Attorney Luke Martell's earlier clarification of the variance standards, one of the factors is unnecessary hardship. Therefore, what you have considered to be unnecessary hardship is putting it in the backyard versus the east side. Owner Kristie Kosobucki stated it is an eyesore, cost prohibitive to try to figure out how to get the gas line to that location in the backyard and they do not have a huge yard.

Village Attorney Luke Martell stated the law has been pretty clear that the unnecessary hardship cannot be self-imposed or created. It has to be something that is unique to the land. The second factor when you consider conditions unique to the property, it is conditions unique to the property and not to the applicant and the unnecessary hardship cannot be self-imposed.

Owner Kristie Kosobucki stated if there are any suggestions on where to put this generator, they would consider that. This is where they are stuck.

Member Mark Grady inquired if the lot was rectangular. Owner Kristie Kosobucki stated it is and, on the survey where the dotted line is, that is where the ravine is. Most of the area to the northwest is woods. Member Mark Grady stated the house is parallel to Wye Lane. Not exactly parallel to the lot line on the east. It is a little further south to the house as you get closer to the home.

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Nancy inquired if anyone was here from the company Adams Generators. Owner Kristie Kosobucki stated no but they did provide a letter which is in the packet.

Member Adam Bazelon inquired when the owners plan to start the addition. Owner Kristie Kosobucki they are hoping for some time next year. Member Adam Bazelon inquired if that was on the north side of the home. Owner Kristie Kosobucki confirmed the addition location. Member Adam Bazelon commented if it wasn't for the addition, the generator could be placed in that area. Owner Kristie Kosobucki agreed.

Adams Generators told Owner Kristie Kosobucki that it would cost a significant amount of money to run the gas line over there because there is no basement over in that location. To do that for potentially 9-12 months and then come back to Board of Appeals to request another new location.

Closing of Testimony

Without objection and by unanimous consent, Chairperson Nancy Filsinger closed testimony at 5:21 p.m.

Chairperson Nancy Filsinger pointed out the standard of unnecessary hardship and meeting that criterion.

Member Mark Grady stated I understand it is the Village Attorneys role to emphasize how rare variances should be. All of these cases could be argued either way. You could make an argument, whether you all agree is a different question, that it is an unnecessary hardship to put it in any other location. The reason he asked the questions about the shape of the lot is the house is situated on this lot. There are angled lot lines and the house is not square to those lot lines. Regarding the unique nature of the property, this is a uniquely shaped piece of property. The home is situated on it uniquely compared to most homes in the village. Particularly when you look on the east side of the home, it was 20 feet to the northeast corner. It is more than that to the southeast corner. You can make an argument that there is an unnecessary hardship for the owners to install the generator somewhere else due to the unique shape and configuration of the lot. The lot lines upon the house and the house upon the lot lines. He is unclear if that is self-imposed or not. The home was built most likely many years ago. Under the legal test I don't know if that is considered self-imposed. Maybe it is. I think there is an argument to make that the variance could be granted under the standards.

Member Scott Ratke stated he agreed with the analysis, commenting the lot is unique.

Motion by Member Mark Grady to grant the variance for the reasons that were just discussed, believing it is an unnecessary hardship to put the generator somewhere else and it is an unnecessary hardship to go without a generator under the conditions and the unique nature of the lot and the building upon the lot makes the variance necessary for the generator and there is no harm to the public interest. Thomas Dunst seconded the motion. Roll call was taken.

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<u>Thomas Dunst</u>	<u>Aye</u>
<u>Scott Ratke</u>	<u>Aye</u>
<u>Mark Grady</u>	<u>Aye</u>
<u>Adam Bazelon</u>	<u>Aye</u>
<u>Nancy Filsinger</u>	<u>Aye</u>

The variance was granted by roll call vote, 5-0.

Case 2022-06 7001 N Yates Road.

The applicant is requesting a **special exception** to install a new 6-foot-high cedar fence, on a corner lot, forward of the frontline of the home, on Green Tree Road. The special exception request is made pursuant to 745-7(B)(3)(h) [1-2, 5] and 745-7(B)(3)(j) of the Fox Point Code.

Village Attorney Luke Martell read the standards for a special exception, as the following: Section 745-7(B)(3), The Board of Appeals may grant the request for a special exception upon finding that the property owner has shown clear and convincing evidence to believe that the applicant has a legitimate need for the special exception and that granting the special exception will not adversely affect the health, safety or welfare of the community or the immediate area where located and will not impede the purpose, spirit and intent of this section.

Village of Fox Point Building Inspector Michael Rakow

Building Inspector Mr. Michael Rakow stated his name and was sworn in to provide testimony by the Village Clerk Treasurer.

Building Inspector Michael Rakow gave background on Case 2022-06. For this particular case, the fence is on a corner lot and according to Village Code, on a corner lot each road side frontage is considered a front yard.

Mark Grady stated that the existing fence is currently in violation of the ordinance.

Owners Paul Bodis & Rebecca Kiefer

The Owner's Paul Bodis and Rebecca Kiefer were sworn in to provide testimony by the Village Clerk Treasurer.

Chairman Nancy Filsinger asked the owners to provide testimony regarding the case.

Property Owner Rebecca Kiefer stated the fence has been there since they purchased the property. The way the fence is situated now, there is a large privacy fence as pictured in one of the photographs is kind of in the middle of much of the useful property. To the north, it grades down a bit to the neighbor's house. As you look to the south, it is level. Beyond a large portion of the yard is outside of what is fenced and the rest is what is in the fenced in area now. The existing fence is at a point where it needs to be replaced. In speaking with a fencing company and in deciding how to go about doing that, they decided to seek this special exception so that they could both improve the appearance of the fence and to fence in more of their yard. As outlined in the submission, it would add to the aesthetics of the property. The fence style would fit better with the mid-century style of the home. They are hoping to make more usable the entirety of the back yard property. Supplemental

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materials [Exhibit A] were passed out to the members of the board.

Member Mark Grady stated he understands why they are looking at replacing the existing fence, but why make the footprint larger?

Property Owner Paul Bodis commented they have young children. There have been tire tracks on Green Tree in the yard. The post from the mailbox has been replaced twice already on Yates Road. It is a big safety issue for them. They would like to incorporate the large portion of the back yard into the fenced in area to become more of a useful space for them.

Property Owner Rebecca Kiefer stated the way their house is situated, the fence as proposed and submitted to the Board for a variance, would incorporate and make more usable space in the yard that they do have. It does look like a big vacant lot right now. The vacant area is not used currently by them because of the safety concerns. The owners also have a small dog; the fence is also very helpful for the safety of the dog. The fence is great for peace of mind when it comes to the safety of the kids and the dog. They are not asking for permission of the fence, only to make the fenced in area larger in respect to safety.

Member Scott Ratke asked if the owners could walk them through the diagram.

Property Owner Rebecca Kiefer stated the existing fence includes the dotted line and a portion of the pink line. The orange line is not being requested in this application.

Member Mark Grady inquired if they are going approximately 10 feet further to the east for the fence and further south, closer to Green Tree Road.

Briefly, Property Owner Rebecca Kiefer commented on the letter received from a concerned property owner regarding the obstruction of traffic from Green Tree Road. She stated she feels it is merely regarding the confusing renderings submitted, which the Board also raised questions on. They are not trying to fence in their entire lot at all. There is still a very large amount of greenspace that would still be maintained and would give a fair amount of visibility.

The owners received input and feedback from the neighbors that they are happy the owners are replacing the fence and improving the look. They are not concerned about a visibility issue.

Member Mark Grady clarified the Board is need to review the application and make a decision regarding the several feet that extends beyond the back of the house and then even to the front of the house.

Closing of Testimony

Without objection and by unanimous consent, Chairperson Nancy Filsinger closed testimony at 5:45 p.m.

Member Mark Grady stated there is a preliminary standard to be considered as well, Section 745-7(B)(3)(h)[2], that it is reasonably necessary to protect the safety of people residing on the property, in addition to the additional findings and conditions required. For Mark, it is easier to show a legitimate need for a fence than for someone who is not on a busy street, especially with young children involved. That rationale qualifies under the ordinance that requires the fence be reasonably

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necessary to protect the safety of persons residing on the property. As the Board has discussed, they talked about the traffic impeding their property or onto their property on Green Tree. With respect to the other standards, the legitimate need is for the same reasons for the safety of the children on the property. The fence has been there in a slightly different location on the south and west side of the house and it has not adversely affected the health, safety, or welfare of the community in the past with the extension further south and west it would not do that either. The ordinance does generally frown on fences in front yards but on corner lots, especially busy corner lots, the homeowners have shown a need for special exceptions.

Motion by Member Mark Grady, to grant the special for the new 6-foot-high cedar fence, based on the prior points made and as depicted in the diagram.

Member Adam Bazelon when he thinks of legitimate circumstances, it would be something that is more unforeseen than children and dogs because that would apply to many people applying. There is a fence already existing so the legitimate need of the health and safety of the children and dog is already served. This is a very visible piece of property. The purpose of this ordinance is to preserve open green spaces which by extending it is infringing upon that purpose when there is already a fence in his opinion that would serve the legitimate need. He is not necessarily opposed to it but is concerned that the legitimate need is what is says it is, then it almost becomes standardless if kids and dogs is sufficient to meet it.

Member Mark Grady stated he agrees that dogs are not sufficient to meet the legitimate need. Member Mark Grady stated the difference is the location of the property owner. He agrees that the ordinance is to create more open space. That is why he feels there are special exceptions. In a different location and on a different street he would agree with Member Adam Bazelon. With this case, you have to grant a special exception to rebuild this in the exact same location. If you are granting a special exception to rebuild the fence in the exact same location, he doesn't see the significant harm in moving it partway to Green Tree - not all the way to Green Tree to give them more usable space for the children. He can understand Member Adam Bazelon's point.

Seconded by Member Scott Ratke,

Roll call was taken.

<u>Thomas Dunst</u>	<u>Nay</u>
<u>Scott Ratke</u>	<u>Aye</u>
<u>Mark Grady</u>	<u>Aye</u>
<u>Adam Bazelon</u>	<u>Nay</u>
<u>Nancy Filsinger</u>	<u>Aye</u>

Granted by roll call vote, 3 – 2.

Case 2022-07 7900 N Club Circle

The applicant is requesting a special exception to install a new 6-foot-high rustic stockade cedar fence on a corner irregular shaped lot forward of the front line of the home on N. Lake Drive. The special exception request is made pursuant to 745-7(B)(3)(h) [1-2, 5] and 745-7(B)(3)(j) of the Fox Point Code.

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Village of Fox Point Building Inspector Michael Rakow

Building Inspector Mr. Michael Rakow stated his name and was sworn in to provide testimony by the Village Clerk Treasurer.

Building Inspector Michael Rakow gave background on Case 2022-07. This is a corner lot and they requested installation of a fence on Club Circle and Lake Drive. Corner lot on the street side.

Member Mark Grady inquired which side of the street the house faces. Building Inspector Michael Rakow stated it faces Club Circle.

Member Mark Grady asked Building Inspector Michael Rakow to clarify why this came to Board of Appeals.

Building Inspector Michael Rakow stated Lake Drive is on the side of the fence and it is on Club Circle so it is a corner lot. Pursuant to the Village Code, the street fronts are considered the front yard.

Member Mark Grady stated the ordinance talks about a house on a corner lot, but then it says if a building footprint is other than square or rectangular in configuration, then a different section of the code applies. Just to be clear, you are considering this building to be square or rectangular.

Building Inspector Michael Rakow stated he would consider the building to be square or rectangular.

Owners Robert A. Jones

The Property Owner Robert A. Jones was sworn in to provide testimony by the Village Clerk Treasurer.

Chairman Nancy Filsinger asked the owner(s) to provide testimony regarding case.

Property Owner Robert A. Jones stated he simply would like this fence put up to provide privacy. The property is open; the traffic and noise from lake drive is difficult. There is currently no fence on the property.

Member Adam Bazelon inquired how long he lived in the home. Property Owner Robert Jones noted he lived there eight years.

Member Mark Grady stated he believes he was present during the last discussion regarding fences. He further stated that one of the things the Village Codes refers to is that it would be reasonably necessary to protect the safety of people residing on the property, in addition to additional findings. He inquired why property owner Robert Jones feels the fence is reasonably necessary to protect the safety of people residing on the property.

Property owner Robert Jones stated he has no children or dogs on the property. The driveway runs along lake drive on the west side of the home.

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Member Scott Ratke stated the proposed fence is only on the north side of the property. Property owner Robert Jones noted that is correct. He further stated it is a clear shot – like a racetrack by lake drive.

Closing of Testimony

Without objection and by unanimous consent, Chairperson Nancy Filsinger closed testimony at 6:01 p.m.

Motion by Member Adam Bazelon to grant the special exception to install a new 6-foot-high rustic stockade cedar fence on the basis of heavy traffic in the area and it is a legitimate purpose to have a fence there and it would not adversely affect the community in any way.

Chair Nancy Filsinger inquired Village Attorney Luke Martell to clarify the standards for a special exception.

Village Attorney Luke Martell read the standards pursuant to 745-7 (B)(3)[1]. He further stated this is a new fence that is going to be placed forward of the frontline of the home. He agrees the other standards also apply, that there should be a need for safety to apply as pursuant to 745-7(B)(h)[2] to allow for a new fence.

Chair Nancy Filsinger commented it is forward of the frontline of the home due to the parcel being on a corner lot.

Member Mark Grady inquired of Village Attorney Luke Martell clarification of the village codes intent when referencing square and rectangular homes versus other shapes. If this is considered an odd shaped home rather than rectangular or square, then this would not have to come to the Board. If it is found that it is not a square or rectangular footprint, then the front yard and corner yard requirements did not apply. If this is a corner lot with a square or rectangular footprint, then he cannot approve this because he has not met the requirement of it being necessary to protect the safety of people residing on the property. On the other hand, if this is a corner lot with a non-square or non-rectangular footprint, then the fence is in the back yard and there is no issue. So, it comes down to whether this is a square or rectangular footprint and if he is going to be consistent with the way he acted in the past.

Chair Nancy Filsinger stated there is a motion on the floor.

Member Mark Grady seconded the motion.

The motion was restated.

Member Mark Grady withdrew his second.

Member Mark Grady moved pursuant to 745-7(B)(h)[5], Board of Appeals find that the footprint of this location is other than square or rectangular in configuration and therefore the provisions of 745-7(B)(3)(h)[1] apply, the Board of Appeals shall review the determination of the front, side and rear yards. In this case the front is

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the side on Club Circle, as proven under section (B)(3)[j] which says the homeowner has a legitimate need for it without harm to the neighborhood, public safety and public welfare. For purposes of that section, he would agree with Member Adam Bazelon that the owner has a legitimate need for the fence.

Member Scott Ratke seconded the motion.

With no further discussion, the roll was called.

<u>Thomas Dunst</u>	<u>Aye</u>
<u>Scott Ratke</u>	<u>Aye</u>
<u>Mark Grady</u>	<u>Aye</u>
<u>Adam Bazelon</u>	<u>Aye</u>
<u>Nancy Filsinger</u>	<u>Aye</u>

Granted by roll call vote, 5-0.

Case 2022-08 200 W Nokomis Ct

The applicant is requesting a **variance** pertaining to Section 745-15 B. (4) of the Fox Point Village Code in the A3 Residence District, concerning rear yard setback requirement of not less than 20 feet. The request also pertains to Section 756-34 B., Exterior Structures regarding the installation of a generator. The applicant is proposing to install a generator approximately 10 feet from the property fence line.

Village Attorney Luke Martell reviewed with the Board, the standards for a variance. There is a three-part test set forth in the WI State Stats. 1) unnecessary hardship, 2) due to conditions unique to the property, and 3) no harm to the public interest. He also added this is similar to a previous variance application. Each application should be treated separately. You are not creating a pattern of decisions. You are solely applying the State Stats and Village Code individually to each application.

Village of Fox Point Building Inspector Michael Rakow

Building Inspector Mr. Michael Rakow stated his name and was sworn in to provide testimony by the Village Clerk Treasurer.

Building Inspector Michael Rakow gave background on Case 2022-08. In this particular case, the generator is requested to be installed; the setback for that property is 20 feet. They want to install it approximately 10 feet in the setback.

Owners Max Rasansky and Friend Earl Halverson (EJ)

Owner Max Rasansky and Friend Earl Halverson were sworn in to provide testimony by the Village Clerk Treasurer.

Chairman Nancy Filsinger asked the representatives to provide testimony regarding owners Max and Cindy Rasansky's case.

Owner Max Rasansky stated where they are placing the generator is an area that they never use. It is an irregular shaped lot. There is not a lot of room to work with. It will be placed adjacent to

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the central air unit. If you look at the pictures from Indian Creek, it is completely shielded by beautiful trees. The owners have a six-foot high fence. His wife has talked to the neighbor to the north, who they have an excellent relationship with. They have given her their word that for the five minutes that it is tested one time a week, they will test when she is playing bridge away from the house. Originally, they were going to put it in the corner. Unfortunately, when Adams came out to install it, they made a mistake and they would have to replace or move all the trees. The area they want to move it to is not bothering anybody.

Member Mark Grady commented he was looking at the aerial photograph of the home. There is a green dot in the proposed location. You can see the arborvitae trees that you are referring to just to the east of that location. There is a V-shape between the two portions of the residence. If you placed it inside the V on the west side of the property, it would be further away from the property. Is there a reason it cannot be placed in the location?

Friend Earl Halverson (EJ) stated that is where they originally wanted to place it, but the village has its requirements, Adams has their requirements and Generac has their requirements. When all three of those were considered, the lot line was the issue. They were too close to the lot line. The new location with the proposal tonight is actually further from the lot line than the V location would have been.

Owner Max Rasansky commented that they would have been approved at the V location without coming to the Board, but Adams came out and they measured wrong. He then called the village and to have the Building Inspector come out because they had to move the location of the generator. The only way they can place the generator in that spot would be to move all of the trees. The trees cannot be that close to the generator.

Owner Max Rasansky continued that they are extremely sensitive; they are on a corner lot. They keep their property in great shape.

Member Mark Grady inquired how close to the lot line the generator would be.

Owner Max Rasansky stated it would be ten feet to the fence; the fence is on the lot line.

Owner Max Rasansky stated they have lost power twice for 24 hours in the last year and they are traveling more in the winter time.

Closing of Testimony

Without objection and by unanimous consent, Chairperson Nancy Filsinger closed testimony at 6:22 p.m.

Member Scott Ratke stated it doesn't look like there is another spot for the generator on the property.

Nancy stated it looks like unnecessary hardship and conditions unique to the lot and no harm to others.

Motion by Member Scott Ratke to grant the variance for the generator based on

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the unnecessary hardship, based on no other area for placement of the generator and there will be no harm to the public interest and the hardship is peculiar to this property because of the shape of the property.

Member Thomas Dunst seconded the motion.

<u>Thomas Dunst</u>	<u>Aye</u>
<u>Scott Ratke</u>	<u>Aye</u>
<u>Mark Grady</u>	<u>Aye</u>
<u>Adam Bazelon</u>	<u>Aye</u>
<u>Nancy Filsinger</u>	<u>Aye</u>

The variance was granted by roll call vote, 5-0.

Board of Appeals Rules Amendment

The Board held a discussion to consider the adoption of an amendment to Section 2 (B) of the Fox Point Board of Appeals Rules of Procedures, to modify the methodology for scheduling meetings of the Board of Appeals and establishing a regular meeting date.

Motion by Member Mark Grady, Seconded by Member Scott Ratke, and carried unanimously to amend the Board of Appeals Rules of Procedures Section 2. (B), of the Fox Point Board of Appeals Rules of Procedures, to modify the methodology for scheduling meetings of the Board of Appeals and establishing a regular meeting date.

Adjourn

Motion by Chairperson Nancy Filsinger, Seconded by Member Adam Bazelon, and carried by roll call vote (5-0) or unanimously, to adjourn the meeting at 6:27 p.m.

Respectfully Submitted,

Kelly A. Meyer, CMC/WCMC
Village Clerk Treasurer



VILLAGE OF FOX POINT
BOARD OF APPEALS

NOTICE OF APPEAL & APPLICATION FOR REVIEW

1. Name of Appellant Betsy Horsfield
Address of Appellant 7834 N. Beach Drive
Phone Number _____
Home _____ Work _____ Cell 414-384-4484
E-mail Address bahorsfield@gmail.com
2. Address of Property 7834 N. Beach Drive
Present Use of Property Private residence
Proposed Use of Property Same - add generator
Owner's Name and Address if Different than Above _____
3. Has a Previous Appeal or Application Been Made to the Board of Appeals with Respect to This Property?
Yes ☐ No ☒ If Yes, State the Nature of Previous Appeal or Application

Disposition of Previous Appeal _____
Date of Decision in Previous Case _____
4. Date of Decision or Order of Administrative Official from which Appeal is Taken _____
Date of Notice of Such Decision Received by Appellant _____
5. Purpose of Grounds of Appeal or Application. Check Below the Relief Requested by This Appeal or Application:
☐ A. Request for interpretation of Zoning Code and reversal of order, requirement, decision or determination of administrative official. Attach separate sheet listing reasons why you claim this order, requirement, decision or determination is erroneous.
☒ B. Request for variance. Attach separate sheet explaining the following:
 1. Variance requested.
 2. What special conditions exist which will cause unnecessary hardship if the variance requested is not granted.

Appellant Name: Betsy Horsfield

Village of Fox Point - Board of Appeals
Notice of Appeal and Application for Review

3. Why the variance requested is not contrary to the public interest and will not endanger public safety and welfare.
4. Why the variance requested will be in accord with the spirit of the Zoning Code.
5. How the variance, if granted, will cause substantial justice to be done.
- ☐ C. Request for a special exception from the Fence Ordinance. Please obtain a copy of the Fence Ordinance to determine specific requirements. Attach a separate sheet or related materials explaining the following:
 1. Height of the proposed fence.
 2. Exact location of the proposed fence.
 3. Indicate whether the fence is replacement fence.
 4. Type of fence and materials.
- ☐ D. Other: _____
State relief requested and attach separate sheet, listing reasons why appellant is entitled to such relief.
6. Each appeal or application must be accompanied by a scale drawing showing the location and size of property, existing improvements, all abutting properties, and improvements thereon, and the requested change or addition. A \$200 filing fee must also accompany this application.
7. All applications for variances or special exceptions must include an area plat map, survey, pictures or other documentation depicting the location of the structural improvements on adjacent properties. These materials must be reasonably accurate in the judgment of the Board of Appeals.

I hereby swear that all of the above statements and the statements contained in any papers or plans submitted herewith are true to the best of my knowledge and belief.

Betsy Horsfield
Signature of Appellant

8/16/2022
Date

For Office Use Only:

Date Application Received 8/16/22

Receipt Number for \$200 Filing Fee 6000053

Case Number 2022-09

Hearing Date 9/27/22 5:00pm

Disposition _____

From: Betsy Horsfield bahorsfield@gmail.com
Subject:
Date: August 12, 2022 at 3:36 PM
To: Village of Fox Point Board of Appeals



We are requesting a variance for a generator installation. We wish to place it less than 20' from the property line between our neighbor's property to the north (the Arbit property). They have already placed a generator less than 20' from our property line so I assume that their variance request was accepted. Our generator would be adjacent to theirs, just a bit further east.

I believe that Karen Haase, the Pieper Electric sales person has already spoken to the village inspector about this matter.

She believes that the best placement for the generator is near our gas line and electrical box which is on the north side of the house. It also may not be close to windows. It is impossible to get 20' from the property line without going over it and into the neighbor's yard. So the proposed position for the generator is optimum.

Placement of the generator will not endanger anyone and has been approved by the Arbiter. Having a generator will allow our sump pumps to function when the electricity is out during rain storms. We have had our basement flooded too many times in the past when the sump pumps cannot operate. This is a mess and has caused hardship.

File Name: 05-17

OF PROPERTY OF Mr. John H. Smith

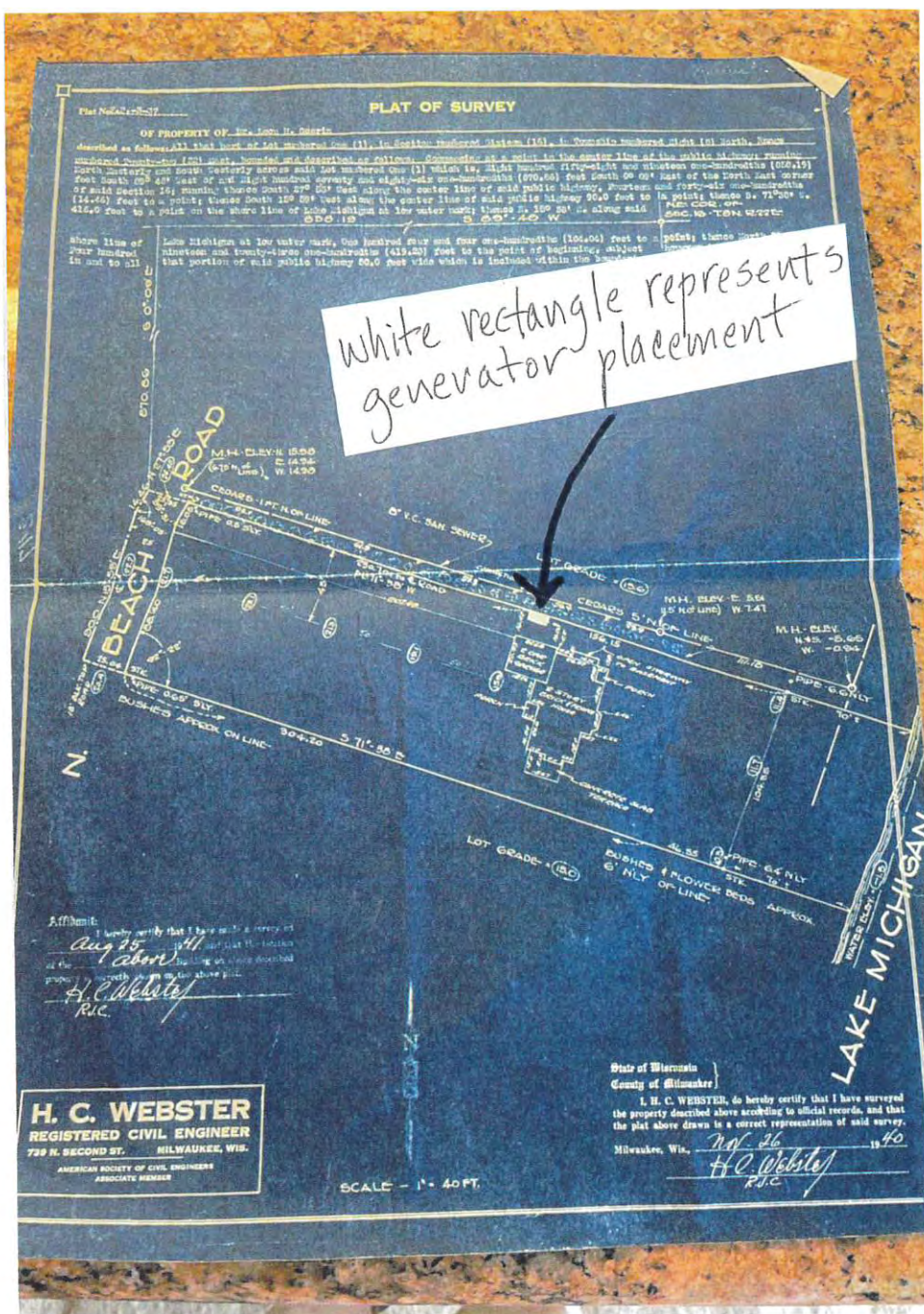
[illegible]

shore line of
Four hundred
in and to all

Lake Michigan at low water mark, One hundred four and four one-hundredths (104.04) feet to nineteen and twenty-three one-hundredths (19.23) feet to the point of beginning, subject that portion of said public highway 80.0 feet wide which is included within the boundary

infants & human beings

white rectangle represents generator placement



submit-

I hereby certify that I have made a search of
 Aug 25 1941 and that the location
 of the (above) is as above described
 property shown on the above plat.
 H. C. White
 R/C

H. C. WEBSTER
REGISTERED CIVIL ENGINEER
739 N. SECOND ST. MILWAUKEE, WIS.
AMERICAN SOCIETY OF CIVIL ENGINEERS
ASSOCIATE MEMBER

State of Wisconsin
County of Milwaukee

I, H. C. WEBSTER, do hereby certify that I have surveyed the property described above according to official records, and that the plat above drawn is a correct representation of said survey.

Milwaukee, Wis. Nov. 26 1940
H. C. Webster
R.J.C.

SCALE - 1" = 40 FT.

VILLAGE OF FOX POINT
7200 N. SANTA MONICA BLVD
FOX POINT WI 53217

414-351-8900

Receipt No: 6.000053

Aug 16, 2022

Horsfield-BOA 7834 N Beach Dr

Previous Balance:	.00
LICENSES & PERMITS - OTHER PERMIT	200.00
10-44540 OTHER PERMIT	
Total:	200.00
CHECK	200.00
Check No: 3168	
Payor: Horsfield-BOA 7834 N Beach Dr	
Total Applied:	200.00
Change Tendered:	.00

08/16/2022 1:03 PM



VILLAGE OF FOX POINT

MILWAUKEE COUNTY

WISCONSIN

VILLAGE HALL
7200 N. SANTA MONICA BLVD.
FOX POINT WI 53217-3505
414-351-8900
FAX 414-351-8909

**VILLAGE OF FOX POINT
NOTICE OF BOARD OF APPEALS MEETING
REQUEST FOR VARIANCE**

PLEASE TAKE NOTICE that the Fox Point Board of Appeals will meet in Schwemer Hall, 7200 N. Santa Monica Blvd, Fox Point, WI, for the date of Wednesday, September 28, 2022, at 5:00 p.m. to hear the following appeal for a variance:

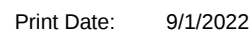
1. **Case 2022-09: 7834 N Beach Dr.** The applicant is requesting a variance pertaining to Section 745-13 B. (3) of the Fox Point Village Code in the A1 Residence District, concerning side yard setback requirement of not less than 20 feet. The request also pertains to Section 756-34 B., Exterior Structures regarding the installation of a generator. The applicant is proposing to install a generator up to the property line.

Any interested party may attend this meeting and be heard concerning this case.

The applications, drawings, and related materials are available for viewing in the office of the Village Clerk/Treasurer, Monday through Thursday from 8:00 a.m. - 4:00 p.m. and on Friday from 8:00 a.m. to 12:00 noon.

Kelly A. Meyer, CMC/WCMC/CMTW
Village Clerk Treasurer

Notice Sent: [September 6, 2022]
Posted: [September 6, 2022]



§ 745-13. A-1 Residence District.

- A. Uses. In an A-1 Residence District, no building or premises, unless otherwise provided in this chapter, shall be erected or used except for dwelling, together with accessory uses incident to the permitted use, provided always accessory use does not constitute or become a public or private nuisance.
- B. Areas and yards. In an A-1 Residence District, no building may be erected, enlarged or altered except in conformity with the following:
- (1) The open area of a lot on which a dwelling is erected or proposed to be erected, together with the area of abutting land reserved for highway purposes, whether private or public, to the center line thereof, shall not be reduced to less than 40,000 square feet for each family. No building not erected for a dwelling shall occupy more than 10% of the gross area of the lot or exceed a height of 25 feet.
 - (2) A front yard of not less than 30 feet shall be provided for every building on a lot for which a setback is not hereinafter provided for. Every building shall be set back from the center line of each adjoining street or area reserved for highway purposes, or any extension or separated portion thereof hereafter established, not less than the street setback specified upon the Official Zoning Map, except that the following reductions may be made for corner lots from the setbacks specified on the Official Zoning Map: five feet when width of lot is more than 80 feet but less than 90 feet; 10 feet when width of lot is more than 70 feet but less than 80 feet; and 15 feet when the width of lot is 70 feet or less; provided, however, that no setback will be less than 15 feet plus 1/2 the width of the abutting road or area reserved for highway purposes.
[Amended 9-11-2012 by Ord. No. 2012-11]
 - (3) A side yard of not less than 20 feet shall be provided for on each side of every building, except that in the case of lots existing as of May 6, 1958, and less than 100 feet in width measured at the narrowest place adjacent to the location of the dwelling, the side yard may be reduced by 1/4 of the difference between said width and 100 feet; provided, however, that the side yard shall in no event be less than 15 feet.
 - (4) A rear yard of not less than 20 feet shall be provided for every building.
 - (5) Every lot on which a building is erected shall have a minimum width of 120 feet.
 - (6) No single-family residence built or existing in this district shall have a height greater than 40 feet from the grade abutting the structure on the front side of the structure, with the exception in that, upon application to the Board of Appeals, the Board of Appeals may grant a special exception on a lot of not less than 80,000 square feet in total area upon the following criteria:
[Amended 2-9-2021 by Ord. No. 2021-01]
 - (a) Special exceptions to the height limitations as hereinbefore set forth may

be granted by the Board of Appeals upon consideration of the following:

- [1] Reasonable compatibility with the character of the immediate neighborhood.
 - [2] Whether there will be unreasonable interference with the aesthetics and scenic views of residences in the surrounding area.
 - [3] Compatibility of the overall size of the structure in relation to the size of the lot.
- (b) For any special exception granted, an additional two feet of setback on all sides of the structure is required for each foot of additional height allowed.
 - (c) In no event shall the Board of Appeals grant a special exception allowing a height greater than 55 feet.
 - (d) For purposes of this subsection, the height of the building shall include the highest roof point of any interior portion of the structure which can be occupied, including but not limited to attic and storage structures and observatories which accommodate entry or occupancy by a person, but shall not include roof attachments such as chimneys, antennas or decorative cupolas.¹
 - (e) The special exceptions herein are not deemed to be variances from this chapter, but an allowed height upon satisfactory compliance with the foregoing conditions.
 - (f) The Clerk/Treasurer shall provide notice of Board of Appeals proceedings under this subsection to owners or occupants of properties the boundaries of which are within 500 feet of any boundary of the subject property.

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

§ 756-34. Air conditioning and refrigeration systems and backup generator installations.

A. Permit requirements.

- (1) Permit required. Except as hereinafter provided, before proceeding with the construction, erection or installation of any air-cooled, water-cooled or mechanically cooled air-conditioning or refrigeration system or unit or backup generator installations, in or to serve any building, a permit shall first be obtained from the Building Inspector.
- (2) Permits shall not be required for the installation of any air-conditioning or refrigeration system or unit that does not use water for cooling and where the source of operating power is obtained by plugging in an electrical cord connection to an electrical outlet. This subsection shall be applicable to portable units.
- (3) Application for a permit shall be made by the installing contractor upon a form provided by the Building Inspector, shall be filled out completely and shall provide the following information:
 - (a) Name and address of contractor.
 - (b) Location of premises where installation is proposed.
 - (c) Name and address of owner.
 - (d) Location of unit on premises, including distance to lot lines for exterior apparatus.
 - (e) Manufacturer's identification, classification and size of unit.
 - (f) Nature of coolant, if applicable.
 - (g) If water cooled, source of water and method of discharging wastewater. (Refer to Department of Building Inspection.)¹
 - (h) Where water conservation devices are required, manufacturer's name, identification, classification and size of equipment.
 - (i) Such additional information as shall be required by the Building Inspector.

- B. Exterior structures.** Where any unit of an air-conditioning or refrigeration system or backup generator installation is located outside of the structure, said unit shall comply with setback requirements for accessory structures as set forth in the Chapter 745, Zoning, and said location shall be subject to approval of the Building Inspector. Said location shall not, by noise or sight, be detrimental to adjoining property. As an exception to the requirements of this subsection, however, the

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

Village Manager may authorize a temporary backup generator installation to be located anywhere on a lot if the Village Manager finds that the generator serves a public purpose and will be removed no later than 12 months from the date of the approval, subject to the temporary structure approval procedure described in § 745-7D of this Code. **[Amended 2-12-2010 by Ord. No. 2010-02]**

(7) ZONING.

- (ab) *Definition.* In this subsection “nonconforming use” means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.
- (am) *Grant of power.* For the purpose of promoting health, safety, morals or the general welfare of the community, the council may regulate and restrict by ordinance, subject to par. (hm), the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, subject to s. 66.10015 (3) the density of population, and the location and use of buildings, structures and land for trade, industry, mining, residence or other purposes if there is no discrimination against temporary structures. This subsection and any ordinance, resolution or regulation enacted or adopted under this section, shall be liberally construed in favor of the city and as minimum requirements adopted for the purposes stated. This subsection may not be deemed a limitation of any power granted elsewhere.
- (b) *Districts.* For any and all of said purposes the council may divide the city into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this section; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings and for the use of land throughout each district, but the regulations in one district may differ from those in other districts. No ordinance enacted or regulation adopted under this subsection may prohibit forestry operations that are in accordance with generally accepted forestry management practices, as defined under s. 823.075 (1) (d). The council may establish mixed-use districts that contain any combination of uses, such as industrial, commercial, public, or residential uses, in a compact urban form. The council may with the consent of the owners establish special districts, to be called planned development districts, with regulations in each, which in addition to those provided in par. (c), will over a period of time tend to promote the maximum benefit from coordinated area site planning, diversified location of structures and mixed compatible uses. Such regulations shall provide for a safe and efficient system for pedestrian and vehicular traffic, attractive recreation and landscaped open spaces, economic design and location of public and private utilities and community facilities and insure adequate standards of construction and planning. Such regulations may also provide for the development of the land in such districts with one or more principal structures and related accessory uses, and in planned development districts and mixed-use districts the regulations need not be uniform.
- (c) *Purposes in view.* Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to encourage the protection of groundwater resources; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; and to preserve burial sites, as defined in s. 157.70 (1) (b). Such regulations shall be made with reasonable consideration, among other things, of the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.
- (d) *Method of procedure.*
 1.
 - a. Upon the request of the city council, the city plan commission, the board of public land commissioners, or if the city has neither, the city plan committee of the city council shall prepare and recommend a district plan and regulations for the city. Following the formulation of tentative recommendations a public hearing shall be held by, at the council's option, the council, the plan commission, the board of public land commissioners or the plan committee. The entity holding the hearing shall consider any comments made, or submitted, by the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city. At least 10 days' prior written notice of any such hearings shall be given to the clerk of any municipality whose boundaries are within 1,000 feet of any lands included in the proposed plan and regulations, and to the commanding officer, or the officer's designee, of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city, but failure to give such notice shall not invalidate such district plan or regulations. Publication of a class 2 notice, under ch. 985, of the tentative recommendations and hearings thereon must be made once during each of the 2 weeks prior to such hearing. If the proposed district plan and regulations have the effect of changing the allowable use of any property within the city, the notice shall include either a map

showing the property affected by the plan and regulations or a description of the property affected by the plan and regulations and a statement that a map may be obtained from the city council.

- b. The council may make changes in the tentative recommendations after first submitting the proposed changes to the plan commission, board of public land commissioners or plan committee for recommendation and report and after publishing a class 2 notice, under ch. 985, of the proposed changes and hearings thereon as well as the notice to the clerk of any contiguous municipality and to the commanding officer, or the officer's designee, of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city, as required in subd. 1. a. Hearings on the proposed changes may be held by, at the council's option, the council, the plan commission, the board of public land commissioners or the plan committee. The entity holding the hearing shall consider any comments made, or submitted, by the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city. If the proposed changes to the proposed district plan and regulations have the effect of changing the allowable use of any property within the city, the notice shall include either a map showing the property affected by the changes or a description of the property affected by the changes and a statement that a map may be obtained from the city council.
2. The council may adopt amendments to an existing zoning ordinance after first submitting the proposed amendments to the city plan commission, board of public land commissioners or plan committee for recommendation and report and after providing the notices as required in subd. 1. b. of the proposed amendments and hearings thereon. In any city which is not located in whole or in part in a county with a population of 750,000 or more, if the proposed amendments would make any change in an airport affected area, as defined in sub. (6) (am) 1. b., the council shall mail a copy of such notice to the owner or operator of the airport bordered by the airport affected area. A hearing shall be held on the proposed amendments by, at the council's option, the council, the plan commission, the board of public land commissioners or the plan committee. The entity holding the hearing shall consider any comments made, or submitted, by the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city. If the proposed amendments have the effect of changing the allowable use of any property within the city, the notice shall include either a map showing the property affected by the amendments or a description of the property affected by the amendments and a statement that a map may be obtained from the city council. If the council does not receive recommendations and a report from the plan commission, board of public land commissioners or plan committee within 60 days of submitting the proposed amendments, the council may hold hearings without first receiving the recommendations and report.
- 2m. In any city which is not located in whole or in part in a county with a population of 750,000 or more, if a proposed amendment under subd. 2. would make any change in an airport affected area, as defined under sub. (6) (am) 1. b. and the owner or operator of the airport bordered by the airport affected area protests against the amendment, the amendment shall not become effective except by the favorable vote of two-thirds of the members of the council voting on the proposed change.
3. The council may repeal or repeal and reenact the entire district plan and all zoning regulations in accordance with subd. 1. The council may repeal or repeal and reenact a part or parts of the district plan and regulations in accordance with subds. 2. and 2m.
4. The city council shall maintain a list of persons who submit a written or electronic request to receive notice of any proposed zoning action that may be taken under subd. 1. a. or b. or 2. that affects the allowable use of the person's property. Annually, the city council shall inform residents of the city that they may add their names to the list. The city council may satisfy this requirement to provide such information by any of the following means: publishing a 1st class notice under ch. 985; publishing on the city's Internet site; 1st class mail; or including the information in a mailing that is sent to all property owners. If the plan commission, the board of public land commissioners, or city plan committee of the city council completes action on any tentative recommendations that are noticed under subd. 1. a., proposed changes to a proposed district plan and regulations that are submitted under subd. 1. b., or proposed amendments that are submitted under subd. 2., and the city council is prepared to vote on the tentative recommendations, proposed changes to a proposed district plan, and regulations or proposed amendments, the city council shall send a notice, which contains a copy or summary of the tentative recommendations, proposed changes to a proposed district plan, and regulations or proposed amendments, to each person on the list whose property, the allowable use of which, may be affected by the tentative recommendations or proposed changes or amendments. The notice shall be by mail or in any reasonable form that is agreed to by the person and the city council, including electronic mail, voice mail, or text message. The city council may charge each person on the list who receives a notice by 1st class mail a fee that does not exceed the approximate cost of providing the notice to the person. An ordinance or amendment that is subject to this subdivision may take effect even if the city council fails to send the notice that is required by this subdivision.

(da) *Interim zoning.* The common council of any city which has not adopted a zoning ordinance may, without referring the matter to the plan commission, enact an interim zoning ordinance to preserve existing uses while the comprehensive zoning plan is being prepared. Such ordinance may be enacted as is an ordinary ordinance but shall be effective for no longer than 2 years after its enactment.

(de) *Conditional use permits.*

1. In this paragraph:
 - a. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a city, but does not include a variance.
 - b. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.
2.
 - a. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.
 - b. The requirements and conditions described under subd. 2. a. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the city relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The city's decision to approve or deny the permit must be supported by substantial evidence.
3. Upon receipt of a conditional use permit application, and following publication in the city of a class 2 notice under ch. 985, the city shall hold a public hearing on the application.
4. Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the city may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the city zoning board.
5. If a city denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in par. (e) 10.

(e) *Board of appeals.*

1. The council which enacts zoning regulations pursuant to this section shall by ordinance provide for the appointment of a board of appeals, and shall provide in such regulations that said board of appeals may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. Nothing in this subdivision shall preclude the granting of special exceptions by the city plan commission or the common council in accordance with the zoning regulations adopted pursuant to this section which were in effect on July 7, 1973 or adopted after that date.
2. The board of appeals shall consist of 5 members appointed by the mayor subject to confirmation of the common council for terms of 3 years, except that of those first appointed one shall serve for one year, 2 for 2 years and 2 for 3 years. The members of the board shall serve at such compensation to be fixed by ordinance, and shall be removable by the mayor for cause upon written charges and after public hearing. The mayor shall designate one of the members as chairperson. The board may employ a secretary and other employees. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The mayor shall appoint, for staggered terms of 3 years, 2 alternate members of such board, in addition to the 5 members above provided for. Annually, the mayor shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate shall act, with full power, only when a member of the board refuses to vote because of interest or when a member is absent. The 2nd alternate shall so act only when the 1st alternate so refuses or is absent or when more than one member of the board so refuses or is absent. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternates.
3. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this section. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.
- 3m. If a quorum is present, the board of appeals may take action under this subsection by a majority vote of the members present.

4. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
5. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with the officer, that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.
6. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. In any action involving a listed property, as defined in s. 44.31 (4), the board shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the planning commission.
7.
 - a. In this subdivision, "area variance" means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this paragraph. In this subdivision, "use variance" means an authorization by the board of appeals under this paragraph for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.
 - b. The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.
 - c. The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.
 - d. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.
 - e. The council of a city may enact an ordinance specifying an expiration date for a variance granted under this subdivision if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of appeals does not specify an expiration date for the variance, a variance granted under this subdivision does not expire unless, at the time it is granted, the board of appeals specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012.
 - f. A variance granted under this subdivision runs with the land.
8. In exercising the above mentioned powers such board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.
10. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by

certiorari. The court shall not stay proceedings upon the decision appealed from, but may, on application, on notice to the board of appeals and on due cause shown, grant a restraining order. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

14. Costs shall not be allowed against the board unless it shall appear to the court that the board acted with gross negligence or in bad faith, or with malice, in making the decision appealed from.

15. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

(ea) *Filing fees.* The common council may by ordinance or resolution establish reasonable fees for the filing of a petition for amendment of the zoning ordinance or official map, or for filing an appeal to the board of appeals.

(em) *Historic preservation.*

1. Subject to subds. 2. and 2m., a city, as an exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, may regulate by ordinance, or if a city contains any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall, not later than 1995, enact an ordinance to regulate, any place, structure or object with a special character, historic, archaeological or aesthetic interest, or other significant value, for the purpose of preserving the place, structure or object and its significant characteristics. Subject to subds. 2., 2m., and 3., a city may create a landmarks commission to designate historic or archaeological landmarks and establish historic districts. Subject to subds. 2. and 2m., the city may regulate, or if the city contains any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall regulate, all historic or archaeological landmarks and all property within each historic district to preserve the historic or archaeological landmarks and property within the district and the character of the district.

2. Before the city designates a historic landmark or establishes a historic district, the city shall hold a public hearing. If the city proposes to designate a place, structure, or object as a historic landmark or establish a historic district that includes a place, structure, or object, the city shall, by 1st class mail, notify the owner of the place, structure, or object of the determination and of the time and place of the public hearing on the determination.

2m. In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this paragraph, a city shall allow an owner to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.

3. An owner of property that is affected by a decision of a city landmarks commission may appeal the decision to the common council. The common council may overturn a decision of the commission by a majority vote of the common council.

(f) *Enforcement and remedies.*

1. The council may provide by ordinance for the enforcement of this section and of any ordinance or regulation made thereunder. In case of a violation of this section or of such ordinance or regulation such council may provide for the punishment by fine and by imprisonment for failure to pay such fine. It is also empowered to provide civil penalties for such violation.

2. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is or is proposed to be used in violation of this section or of any ordinance or other regulation made under authority conferred hereby, the proper authorities of the city, or any adjacent or neighboring property owner who would be specially damaged by such violation may, in addition to other remedies, institute appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about such premises.

(g) *Conflict with other laws.* Wherever the regulations made under authority of this section require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this section shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this section, the provisions of such statute or local ordinance or regulation shall govern.

(gm) *Permits.* Neither the city council, nor the city plan commission, nor the city plan committee of the city council, nor the board of appeals may condition or withhold approval of a permit under this section based upon the

property owner entering into a contract, or discontinuing, modifying, extending, or renewing any contract, with a 3rd party under which the 3rd party is engaging in a lawful use of the property.

(h) *Nonconforming uses.* The continued lawful use of a building, premises, structure, or fixture existing at the time of the adoption or amendment of a zoning ordinance may not be prohibited although the use does not conform with the provisions of the ordinance. The nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building, premises, structure, or fixture shall not during its life exceed 50 percent of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use. If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the ordinance.

(ham) *Manufactured home communities.* Notwithstanding par. (h), a manufactured home community licensed under s. 101.935 that is a legal nonconforming use continues to be a legal nonconforming use notwithstanding the occurrence of any of the following activities within the community:

1. Repair or replacement of homes.
2. Repair or replacement of infrastructure.

(hb) *Repair, rebuilding, and maintenance of certain nonconforming structures.*

1. In this paragraph:
 - a. "Development regulations" means the part of a zoning ordinance that applies to elements including setback, height, lot coverage, and side yard.
 - b. "Nonconforming structure" means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance.
2. An ordinance may not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.

(hc) *Restoration or replacement of certain nonconforming structures.*

1. Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this subsection may not prohibit the restoration or replacement of a nonconforming structure if the structure will be restored to, or replaced at, the size, subject to subd. 2., location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:
 - a. The nonconforming structure was damaged or destroyed on or after March 2, 2006.
 - b. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.
2. An ordinance enacted under this subsection to which subd. 1. applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.

(he) *Antenna facilities.* The governing body of a city may not enact an ordinance or adopt a resolution on or after May 6, 1994, or continue to enforce an ordinance or resolution on or after May 6, 1994, that affects satellite antennas with a diameter of 2 feet or less unless one of the following applies:

1. The ordinance or resolution has a reasonable and clearly defined aesthetic or public health or safety objective.
2. The ordinance or resolution does not impose an unreasonable limitation on, or prevent, the reception of satellite-delivered signals by a satellite antenna with a diameter of 2 feet or less.
3. The ordinance or resolution does not impose costs on a user of a satellite antenna with a diameter of 2 feet or less that exceed 10 percent of the purchase price and installation fee of the antenna and associated equipment.

(hf) *Amateur radio antennas.* The governing body of a city may not enact an ordinance or adopt a resolution on or after April 17, 2002, or continue to enforce an ordinance or resolution on or after April 17, 2002, that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:

1. The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.
2. The ordinance or resolution reasonably accommodates amateur radio communications.

(hg) *Amortization prohibited.*

1. In this paragraph, "amortization ordinance" means an ordinance that allows the continuance of the lawful use of a nonconforming building, premises, structure, or fixture that may be lawfully used as described under par. (h), but only for a specified period of time, after which the lawful use of such building, premises, structure, or fixture must be discontinued without the payment of just compensation.
2. Subject to par. (h), an ordinance enacted under this subsection may not require the removal of a nonconforming building, premises, structure, or fixture by an amortization ordinance.

(hi) *Payday lenders.*

1. In this paragraph:

- a. "Licensee" has the meaning given in s. 138.14 (1) (i).
 - b. "Payday lender" means a business, owned by a licensee, that makes payday loans.
 - c. "Payday loan" has the meaning given in s. 138.14 (1) (k).
2. Except as provided in subds. 3., 4., and 5., no payday lender may operate in a city unless it receives a permit to do so from the city council, and the city council may not issue a permit to a payday lender if any of the following applies:
 - a. The payday lender would be located within 1,500 feet of another payday lender.
 - b. The payday lender would be located within 150 feet of a single-family or 2-family residential zoning district.
 3. A city may regulate payday lenders by enacting a zoning ordinance that contains provisions that are more strict than those specified in subd. 2.
 4. If a city has enacted an ordinance regulating payday lenders that is in effect on January 1, 2011, the ordinance may continue to apply and the city may continue to enforce the ordinance, but only if the ordinance is at least as restrictive as the provisions of subd. 2.
 5. Notwithstanding the provisions of subd. 4., if a payday lender that is doing business on January 1, 2011, from a location that does not comply with the provisions of subd. 2., the payday lender may continue to operate from that location notwithstanding the provisions of subd. 2.
- (hm) *Migrant labor camps.* The council of a city may not enact an ordinance or adopt a resolution that interferes with any repair or expansion of migrant labor camps, as defined in s. 103.90 (3), that are in existence on May 12, 1992, if the repair or expansion is required by an administrative rule promulgated by the department of workforce development under ss. 103.90 to 103.97. An ordinance or resolution of a city that is in effect on May 12, 1992, and that interferes with any repair or expansion of existing migrant labor camps that is required by such an administrative rule is void.
- (i) *Community and other living arrangements.* For purposes of this section, the location of a community living arrangement for adults, as defined in s. 46.03 (22), a community living arrangement for children, as defined in s. 48.743 (1), a foster home, as defined in s. 48.02 (6), or an adult family home, as defined in s. 50.01 (1), in any city shall be subject to the following criteria:
1. No community living arrangement may be established after March 28, 1978 within 2,500 feet, or any lesser distance established by an ordinance of the city, of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the city. Two community living arrangements may be adjacent if the city authorizes that arrangement and if both facilities comprise essential components of a single program.
 2. Community living arrangements shall be permitted in each city without restriction as to the number of facilities, so long as the total capacity of such community living arrangements does not exceed 25 or one percent of the city's population, whichever is greater. When the capacity of the community living arrangements in the city reaches that total, the city may prohibit additional community living arrangements from locating in the city. In any city of the 1st, 2nd, 3rd or 4th class, when the capacity of community living arrangements in an aldermanic district reaches 25 or one percent of the population, whichever is greater, of the district, the city may prohibit additional community living arrangements from being located within the district. Agents of a facility may apply for an exception to the requirements of this subdivision, and such exceptions may be granted at the discretion of the city.
- 2m. A foster home that is the primary domicile of a foster parent and that is licensed under s. 48.62 or an adult family home certified under s. 50.032 (1m) (b) shall be a permitted use in all residential areas and is not subject to subds. 1. and 2. except that foster homes operated by corporations, child welfare agencies, churches, associations, or public agencies shall be subject to subds. 1. and 2.
- 2r.
- a. No adult family home described in s. 50.01 (1) (b) may be established within 2,500 feet, or any lesser distance established by an ordinance of the city, of any other adult family home described in s. 50.01 (1) (b) or any community living arrangement. An agent of an adult family home described in s. 50.01 (1) (b) may apply for an exception to this requirement, and the exception may be granted at the discretion of the city.
 - b. An adult family home described in s. 50.01 (1) (b) that meets the criteria specified in subd. 2r. a. and that is licensed under s. 50.033 (1m) (b) is permitted in the city without restriction as to the number of adult family homes and may locate in any residential zone, without being required to obtain special zoning permission except as provided in subd. 9.
3. In all cases where the community living arrangement has capacity for 8 or fewer persons being served by the program, meets the criteria listed in subds. 1. and 2., and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to locate in any residential zone, without being required to obtain special zoning permission except as provided in subd. 9.
 4. In all cases where the community living arrangement has capacity for 9 to 15 persons being served by the program, meets the criteria listed in subds. 1. and 2., and is licensed, operated, or permitted under the

authority of the department of health services or the department of children and families, that facility is entitled to locate in any residential area except areas zoned exclusively for single-family or 2-family residences except as provided in subd. 9., but is entitled to apply for special zoning permission to locate in those areas. The city may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

5. In all cases where the community living arrangement has capacity for serving 16 or more persons, meets the criteria listed in subds. 1. and 2., and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The city may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.
6. The department of health services shall designate a single subunit within that department to maintain appropriate records indicating the location and number of persons served by each community living arrangement for adults, and such information shall be available to the public. The department of children and families shall designate a single subunit within that department to maintain appropriate records indicating the location and number of persons served by each community living arrangement for children, and such information shall be available to the public.
7. In this paragraph, "special zoning permission" includes but is not limited to the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.
8. The attorney general shall take all necessary action, upon the request of the department of health services or the department of children and families, to enforce compliance with this paragraph.
9. Not less than 11 months nor more than 13 months after the first licensure of an adult family home under s. 50.033 or of a community living arrangement and every year thereafter, the common council of a city in which a licensed adult family home or a community living arrangement is located may make a determination as to the effect of the adult family home or community living arrangement on the health, safety or welfare of the residents of the city. The determination shall be made according to the procedures provided under subd. 10. If the common council determines that the existence in the city of a licensed adult family home or a community living arrangement poses a threat to the health, safety or welfare of the residents of the city, the common council may order the adult family home or community living arrangement to cease operation unless special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the adult family home or community living arrangement. The adult family home or community living arrangement must cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.
- 9m. The fact that an individual with acquired immunodeficiency syndrome or a positive HIV test, as defined in s. 252.01 (2m), resides in a community living arrangement with a capacity for 8 or fewer persons may not be used under subd. 9. to assert or prove that the existence of the community living arrangement in the city poses a threat to the health, safety or welfare of the residents of the city.
10. A determination made under subd. 9. shall be made after a hearing before the common council. The city shall provide at least 30 days' notice to the licensed adult family home or the community living arrangement that such a hearing will be held. At the hearing, the licensed adult family home or the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The common council may call witnesses and may issue subpoenas. All witnesses shall be sworn by the common council. The common council shall take notes of the testimony and shall mark and preserve all exhibits. The common council may, and upon request of the licensed adult family home or the community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the city. Within 20 days after the hearing, the common council shall mail or deliver to the licensed adult family home or the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.



CASE 2022-10

**VILLAGE OF FOX POINT
BOARD OF APPEALS**

NOTICE OF APPEAL & APPLICATION FOR REVIEW

1. Name of Appellant Thomas Stachowiak; Stack Design Group
Address of Appellant 413 N 2nd Street Suite 230 Milwaukee, WI 53203
Phone Number 414-807-8033 414-807-8033 414-807-8033
Home Work Cell
E-mail Address stackgroup@aol.com
2. Address of Property 8339 N Lake Drive
Present Use of Property One story residential dwelling
Proposed Use of Property Renovated & expanded residential dwelling
Owner's Name and Address if Different than Above Ralph Bencriscutto
2425 S. Memorial Drive, Racine, WI 53403 262-664-3166 ralphb@towerenergypartners.com
3. Has a Previous Appeal or Application Been Made to the Board of Appeals with Respect to This Property?
Yes () **No** () If Yes, State the Nature of Previous Appeal or Application

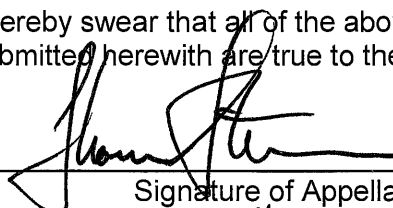
Disposition of Previous Appeal
Date of Decision in Previous Case
4. Date of Decision or Order of Administrative Official from which Appeal is Taken
Date of Notice of Such Decision Received by Appellant
5. Purpose of Grounds of Appeal or Application. Check Below the Relief Requested by This Appeal or Application:
- ☐ A. Request for interpretation of Zoning Code and reversal of order, requirement, decision or determination of administrative official. Attach separate sheet listing reasons why you claim this order, requirement, decision or determination is erroneous.
- ☒ B. Request for variance. Attach separate sheet explaining the following:
1. Variance requested.
2. What special conditions exist which will cause unnecessary hardship if the variance requested is not granted.

Appellant Name: Thomas Stachowiak; Stack Design Group

Village of Fox Point - Board of Appeals
Notice of Appeal and Application for Review

3. Why the variance requested is not contrary to the public interest and will not endanger public safety and welfare.
 4. Why the variance requested will be in accord with the spirit of the Zoning Code.
 5. How the variance, if granted, will cause substantial justice to be done.
 - ☐ C. Request for a special exception from the Fence Ordinance. Please obtain a copy of the Fence Ordinance to determine specific requirements. Attach a separate sheet or related materials explaining the following:
 1. Height of the proposed fence.
 2. Exact location of the proposed fence.
 3. Indicate whether the fence is replacement fence.
 4. Type of fence and materials.
 - ☐ D. Other: _____
State relief requested and attach separate sheet, listing reasons why appellant is entitled to such relief.
6. Each appeal or application must be accompanied by a scale drawing showing the location and size of property, existing improvements, all abutting properties, and improvements thereon, and the requested change or addition. A \$200 filing fee must also accompany this application.
7. All applications for variances or special exceptions must include an area plat map, survey, pictures or other documentation depicting the location of the structural improvements on adjacent properties. These materials must be reasonably accurate in the judgment of the Board of Appeals.

I hereby swear that all of the above statements and the statements contained in any papers or plans submitted herewith are true to the best of my knowledge and belief.



Signature of Appellant
THOMAS STACHOWIAK

8-29-22

Date

For Office Use Only:

Date Application Received 8/29/22 Receipt Number for \$200 Filing Fee 16-000054
Case Number 2022-10 Hearing Date Sept. 28, 2022 5pm
Disposition _____

August 29, 2022

Village of Fox Point
Board of Appeals

Re: 8339 N. Lake Drive - Setback variance

REQUEST FOR VARIANCE

1. A variance is requested for the setback dimension from the centerline of E. Dean Road. The “centerline” of the road is not centered between the property lines running along the road. On the subject property side the “centerline” is 25’-0” north of the property line and for the property across the road the “centerline” is 33’-0” away from the property line. The Village boundary line between Bayside and Fox Point appears to have shifted the “centerline” closer to the subject property with the southward jog of the property across Dean Road being right on the Village border.
2. The subject property is a single family home located on a corner lot. With a corner lot, it is difficult to create a private back yard since there is a public street on two sides of the property. The proposed location of the addition allows for the creation of private space out of the street view. If the addition is moved south away from Dean Road then the back yard is substantially reduced only to create a larger, and much less useful, secondary front yard.
3. This submittal includes a satellite image view of the subject property and several properties adjacent to the property along E. Dean Road. A straight setback line is shown on the image that illustrates that the proposed setback of the addition to the residence is appropriate and conforming with the existing setbacks of all of the adjacent homes. The proposed addition is no closer to the property line than the existing home, and further from the centerline of the road than several other adjacent homes along E. Dean Road.
4. The design of the addition to the home has several jogs in the façade facing E. Dean Road adding interest and character to the look of the final renovation. Pushing a required setback line further south could result in a straight, flat façade built up to the imposed line. Allowing a portion of the proposed addition to blend with the current setbacks of existing adjacent homes allows for a varied depth of the façade. The home already has a prominent front door on Lake Drive. The deep recess of the Dean Road entrance door gives it more of a back porch feel rather than the feel of a second main front door. Additionally, given the shallow setback of the immediately adjacent home, setting the addition deep into the property may appear inappropriate for the consistency of the street. Allowing the setback as proposed meets the spirit of the code by allowing a more aesthetically pleasing design for the neighborhood.
5. Granting of the variance allows the property owner the “highest and best use” of the property while not in any way having a negative effect on any other property owners enjoyment of their own property.

VILLAGE OF FOX POINT
7200 N. SANTA MONICA BLVD
FOX POINT WI 53217

414-351-8900

Receipt No: 6.000054

Aug 29, 2022

8339 N Lake Drive-BOA Variance

Previous Balance:	.00
LICENSES & PERMITS - OTHER PERMIT	200.00
10-44540 OTHER PERMIT	
Total:	200.00
CHECK	200.00
Check No: 4173	
Payor: 8339 N Lake Drive-BOA Variance	
Total Applied:	200.00
Change Tendered:	.00

Duplicate Copy

08/29/2022 1:55 PM

LEGAL DESCRIPTION:
LOT 1, BLOCK 1, FOX POINT TERRACE, EXCEPT THE EASTERLY 12 FEET FOR STREET PURPOSES, BEING A SUBDIVISION OF A PART OF THE SW 1/4 OF SECTION 9, TOWN 8 NORTH, RANGE 22 EAST, IN THE VILLAGE OF FOX POINT, MILWAUKEE COUNTY, WISCONSIN.



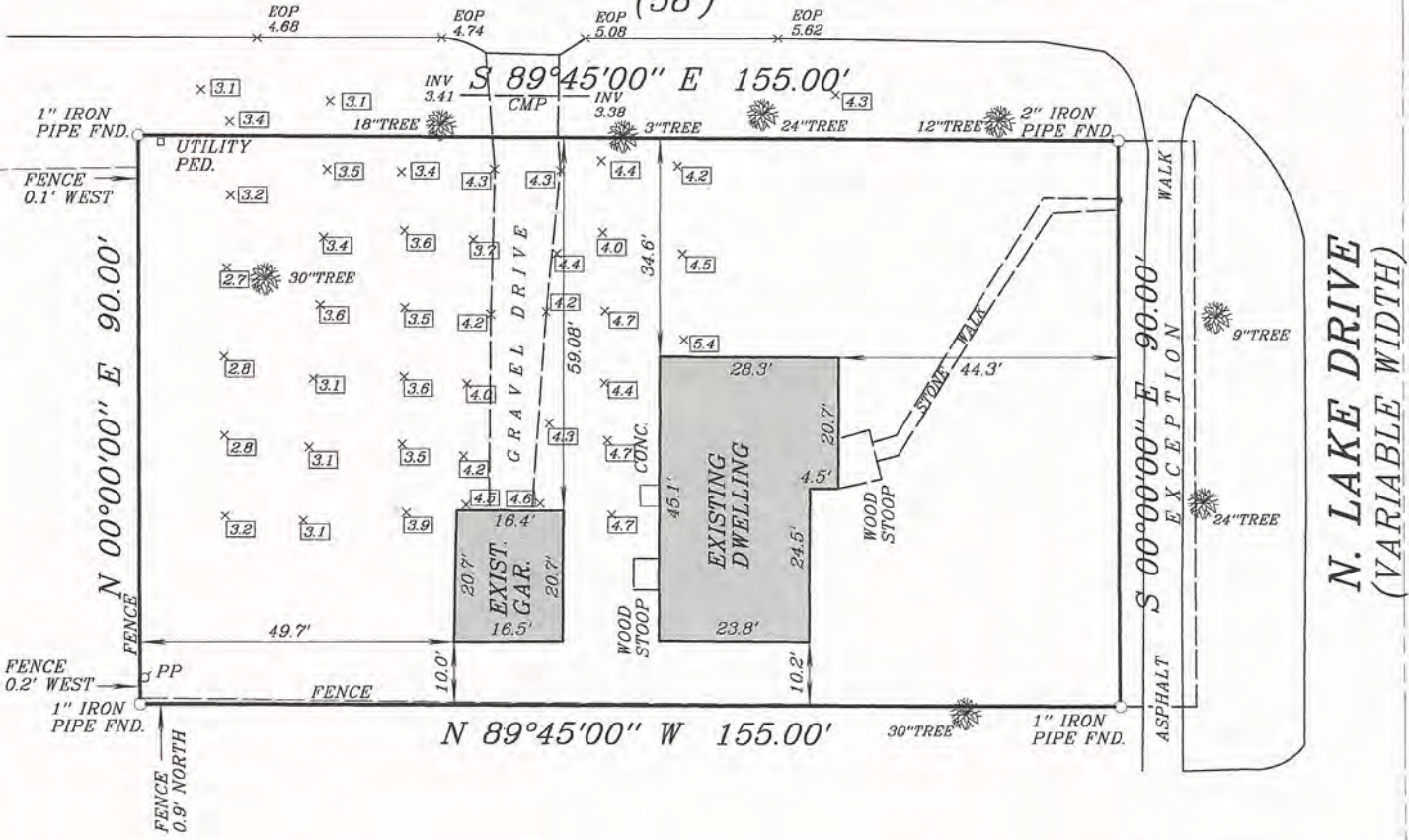
SCALE: 1"=30'



LOT SIZE=13,950 S.F.

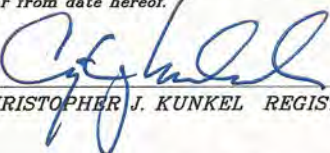
BEARINGS REFER TO THE PLAT OF FOX POINT TERRACE.

E. DEAN ROAD
(58')



NOTE: ELEVATIONS ARE TO ASSUMED DATUM.

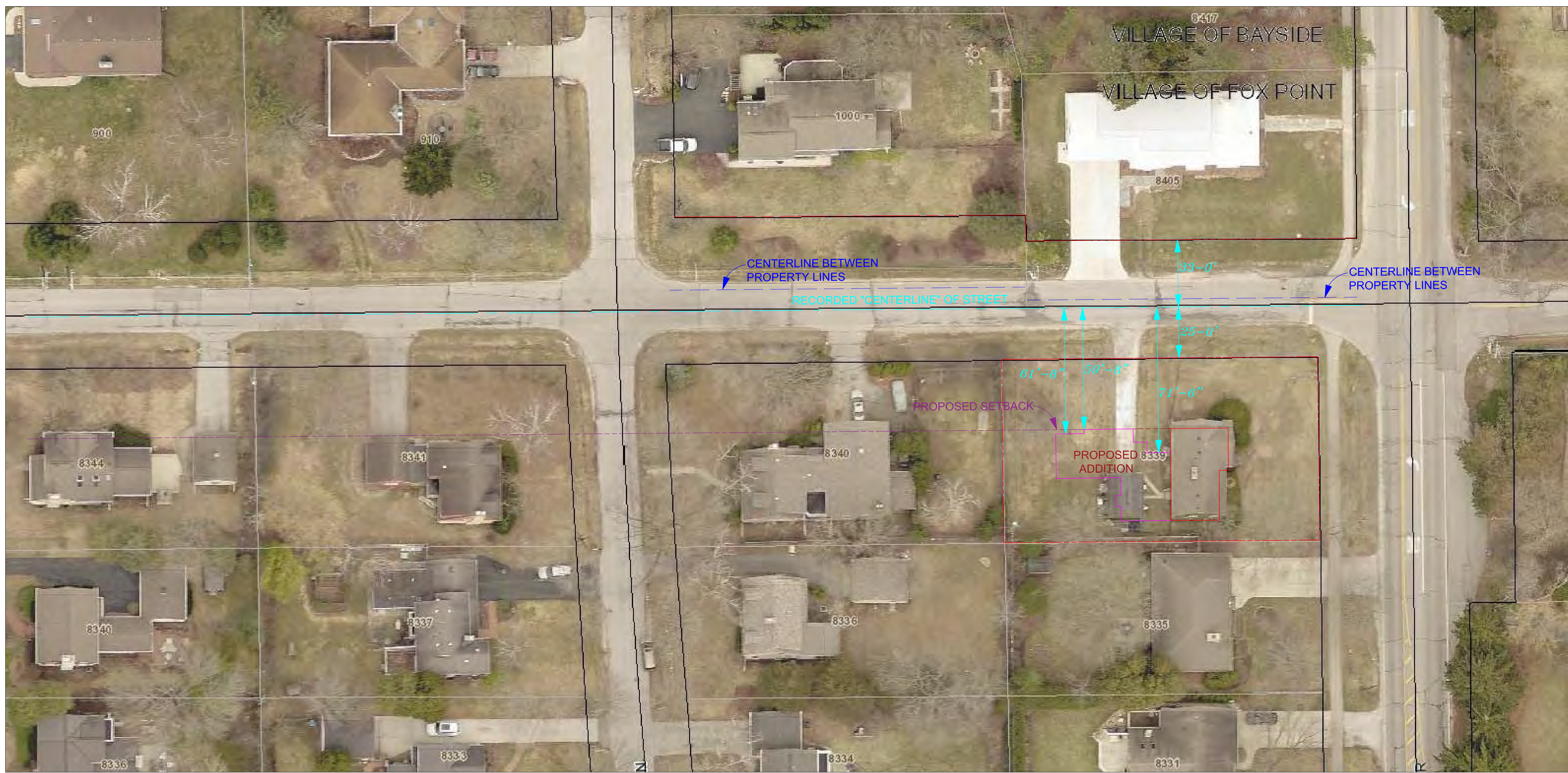
I hereby certify that I have surveyed the above described property and the above map is a true representation thereof and shows the size and location of the property, its exterior boundaries, the location of all visible structures and dimensions of all principal buildings thereon, boundary fences, apparent easements, roadway and visible encroachments, if any. This survey is made for the present owners of the property, and also those who purchase, mortgage, or guarantee, the title thereto within one (1) year from date hereof.

Signed 
CHRISTOPHER J. KUNKEL REGISTERED LAND SURVEYOR S-1755



THIS IS AN ORIGINAL PRINT ONLY
IF SEAL IS IMPRINTED IN RED

01		SHEET NO.		PROJECT NO.		751-003-001		DATE		2/10/22		DRAWN BY		CLW		CHECKED BY		JAC							
PLAT OF SURVEY PREPARED FOR: STACK DESIGN GROUP LOCATION: 8339 N. LAKE DRIVE, VILLAGE OF FOX POINT																		Endpoint Solutions 6871 S. LOVERS LANE FRANKLIN, WI 53132 PHONE: (414) 427-1200				REV. DATE 1 2/10/22 2 2/14/22 3 4 5 6		FINAL DRAFT FIELD SURVEY	





ARCHITECTURE

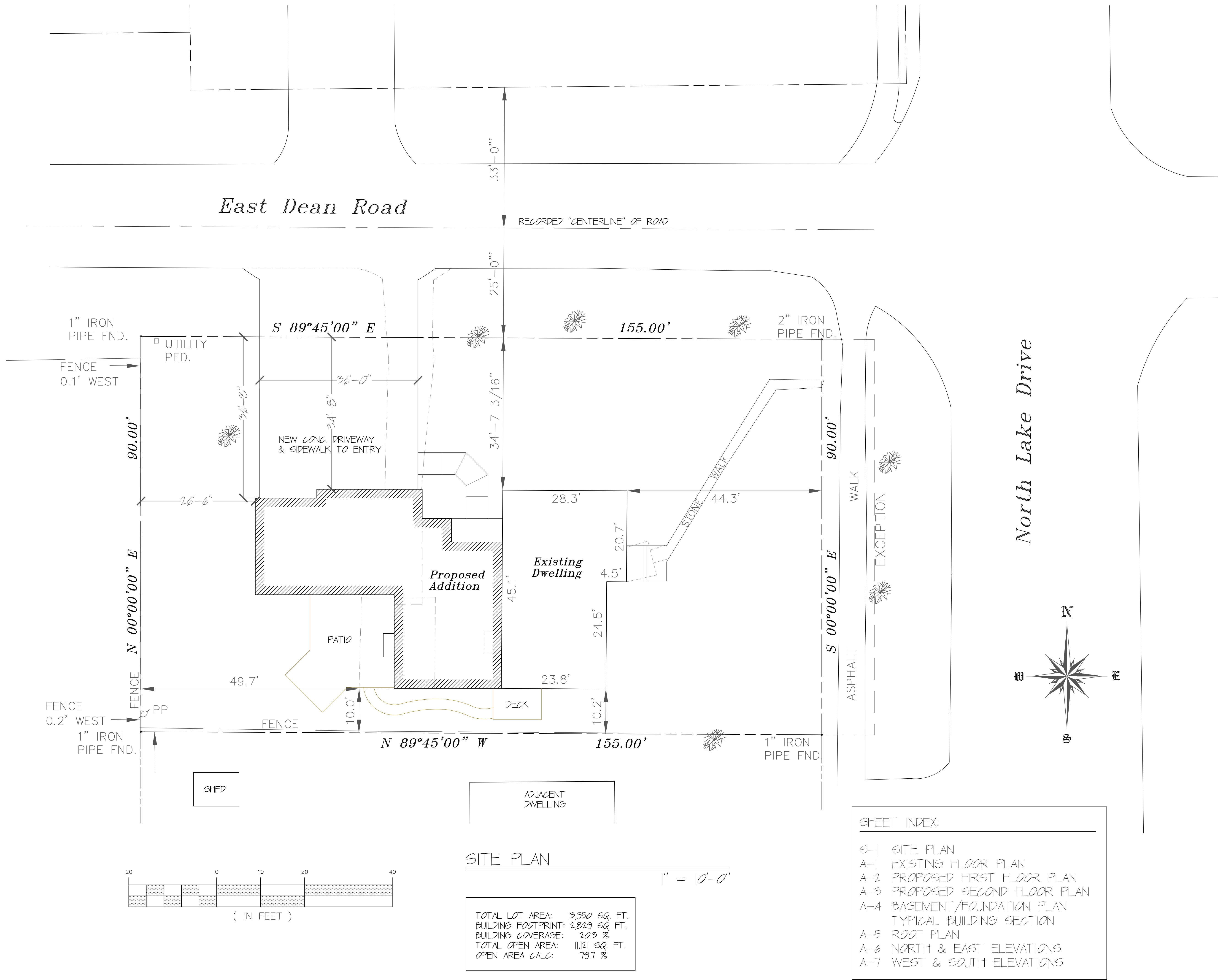
413 NORTH SECOND STREET
MILWAUKEE, WI 53203-3111
414-807-8033 FAX: 414-224-8034

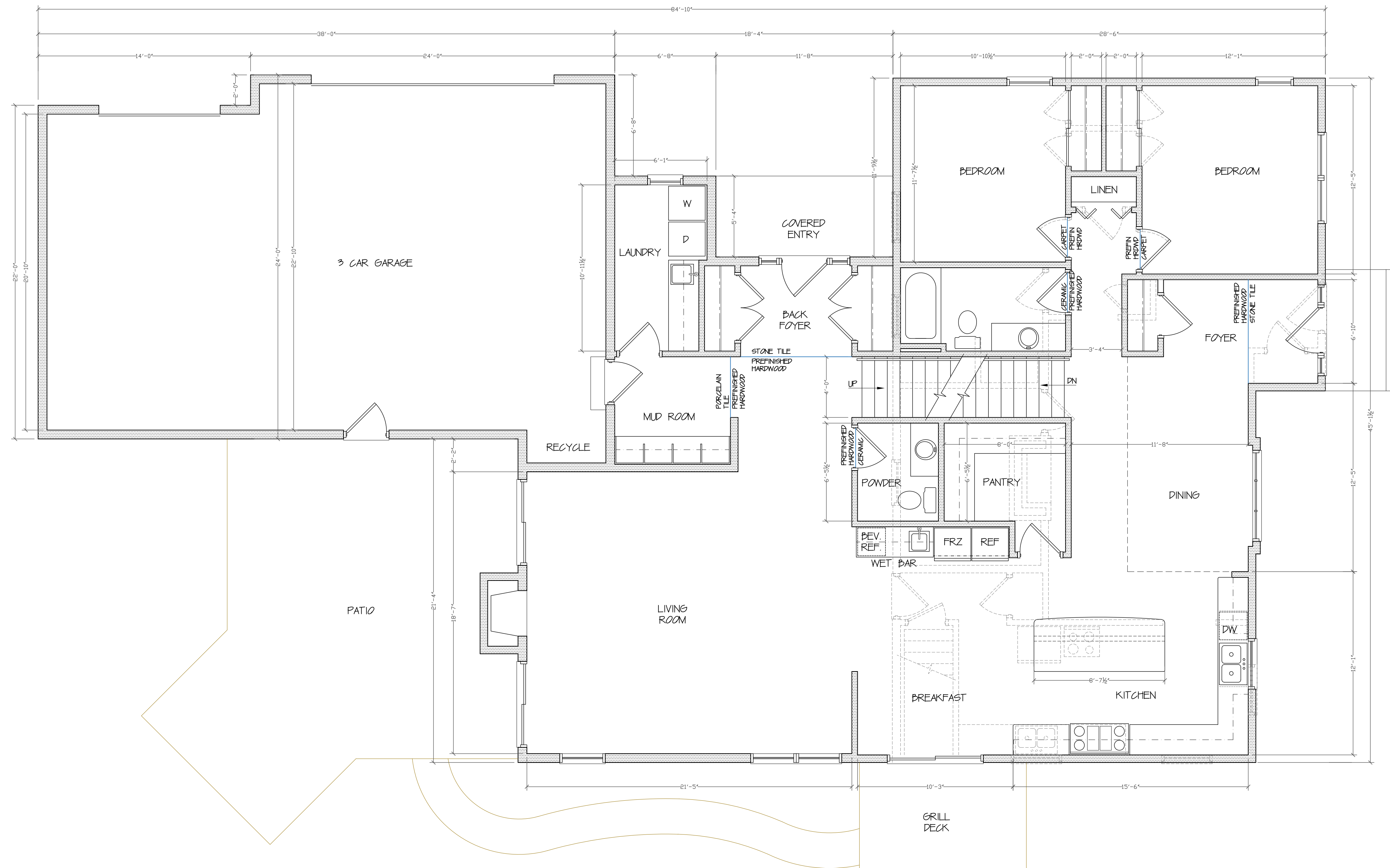
Renovation & Expansion of
Single Family Home
8339 N. Lake Drive
Fox Point, WI 53217

08-29-22

SITE PLAN

S-1





FIRST FLOOR PLAN

FIRST FLOOR: 1,973 SQUARE FEET
SECOND FLOOR: 1,080 SQUARE FEET
TOTAL AREA: 3,053 SQUARE FEET
FINISHED BASEMENT: 635 SQUARE FEET

$\frac{1}{4}'' = 1'-0''$

$$\frac{1}{4}'' = 1'-0''$$



ARCHITECTURE

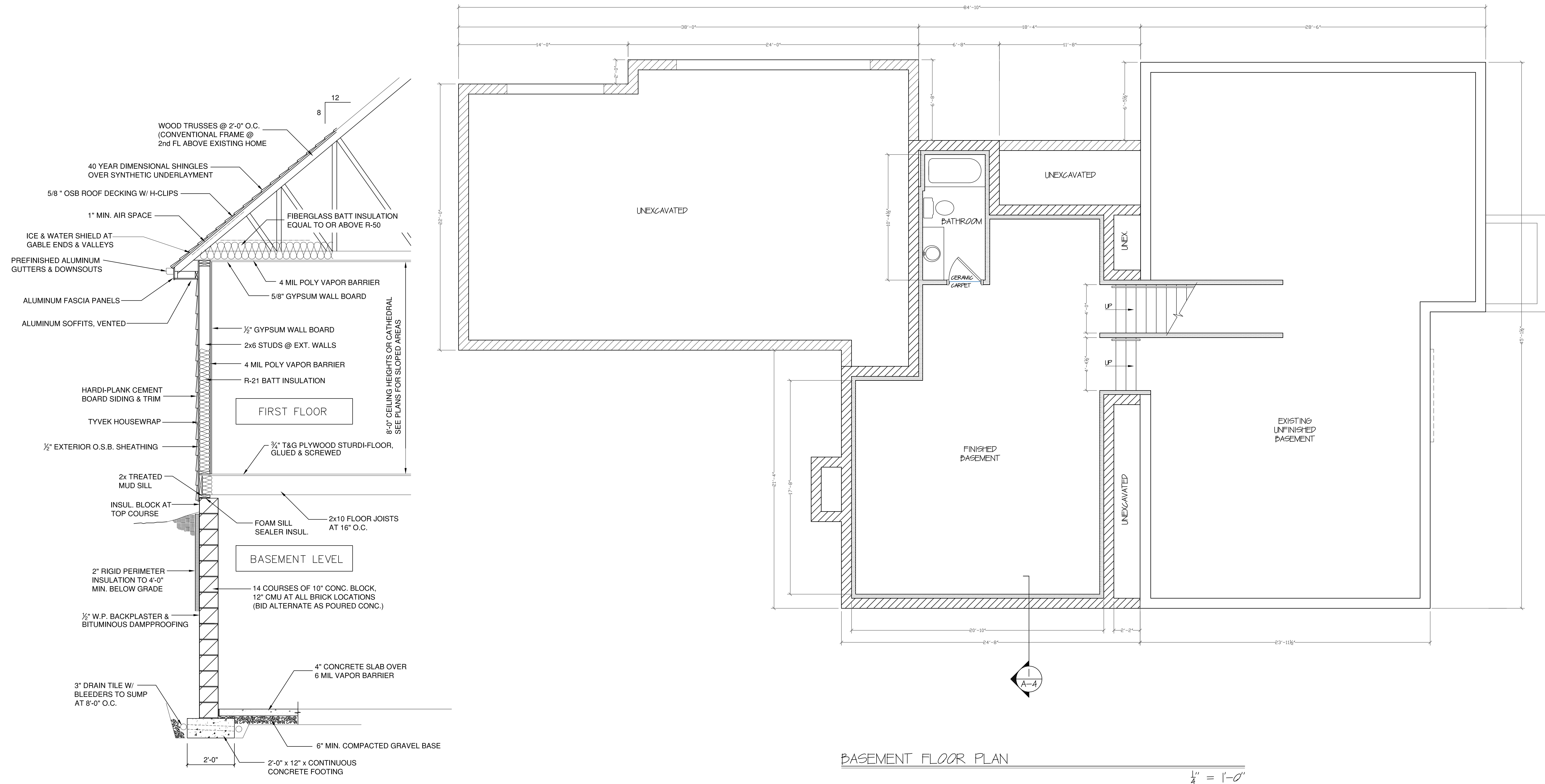
413 NORTH SECOND STREET
MILWAUKEE, WI 53203-3111
414-807-8033 Fax: 414-224-8034

Residential Renovation
8339 N. Lake Drive
Fox Point, WI 53217

02-17-22
03-14-22
06-08-22
08-29-22

BASEMENT

A-4





ARCHITECTURE

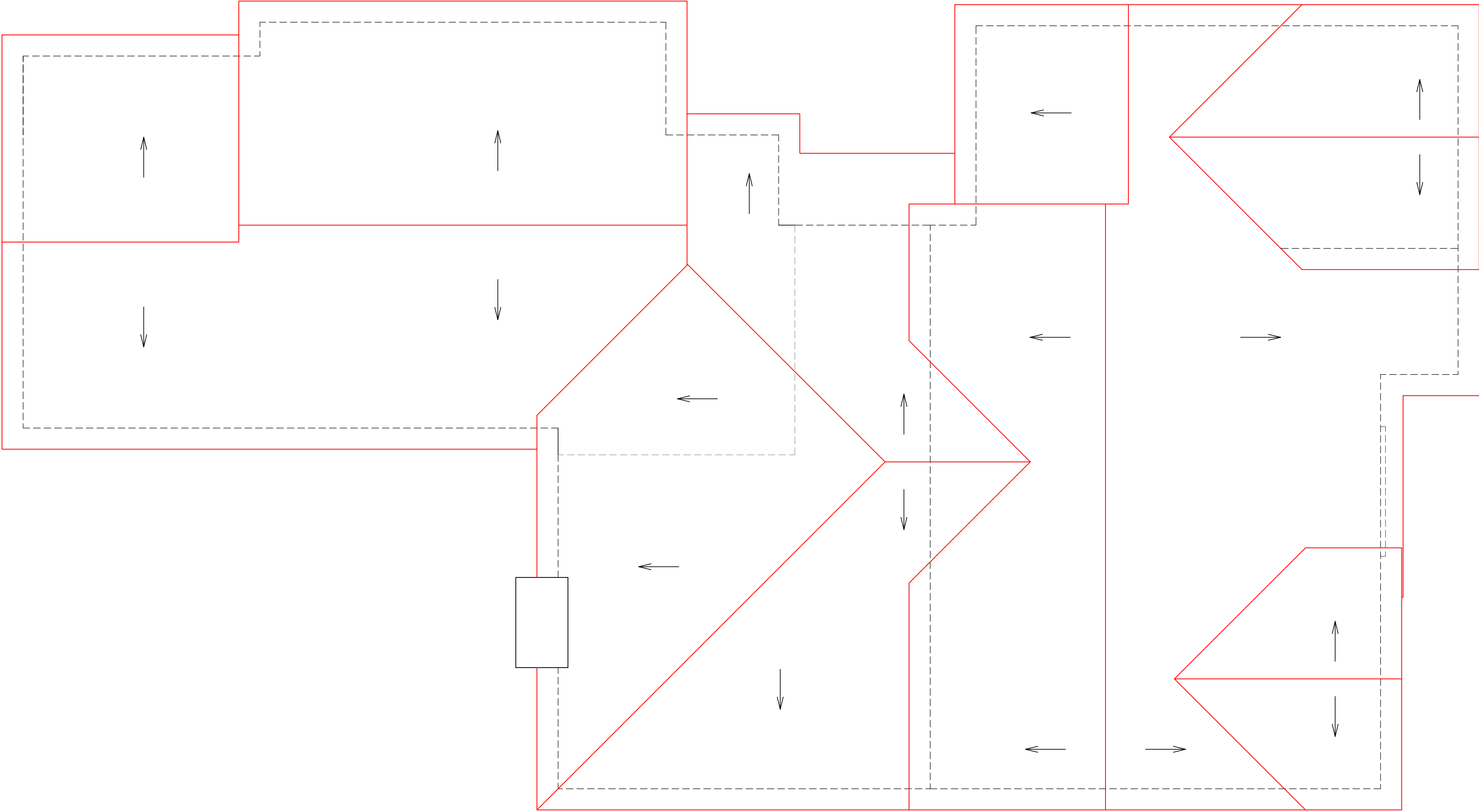
413 NORTH SECOND STREET
MILWAUKEE, WI 53203-3111
414-807-8033 Fax: 414-224-8034

Residential Renovation
8339 N. Lake Drive
Fox Point, WI 53217

02-17-22
03-14-22
06-08-22
08-29-22

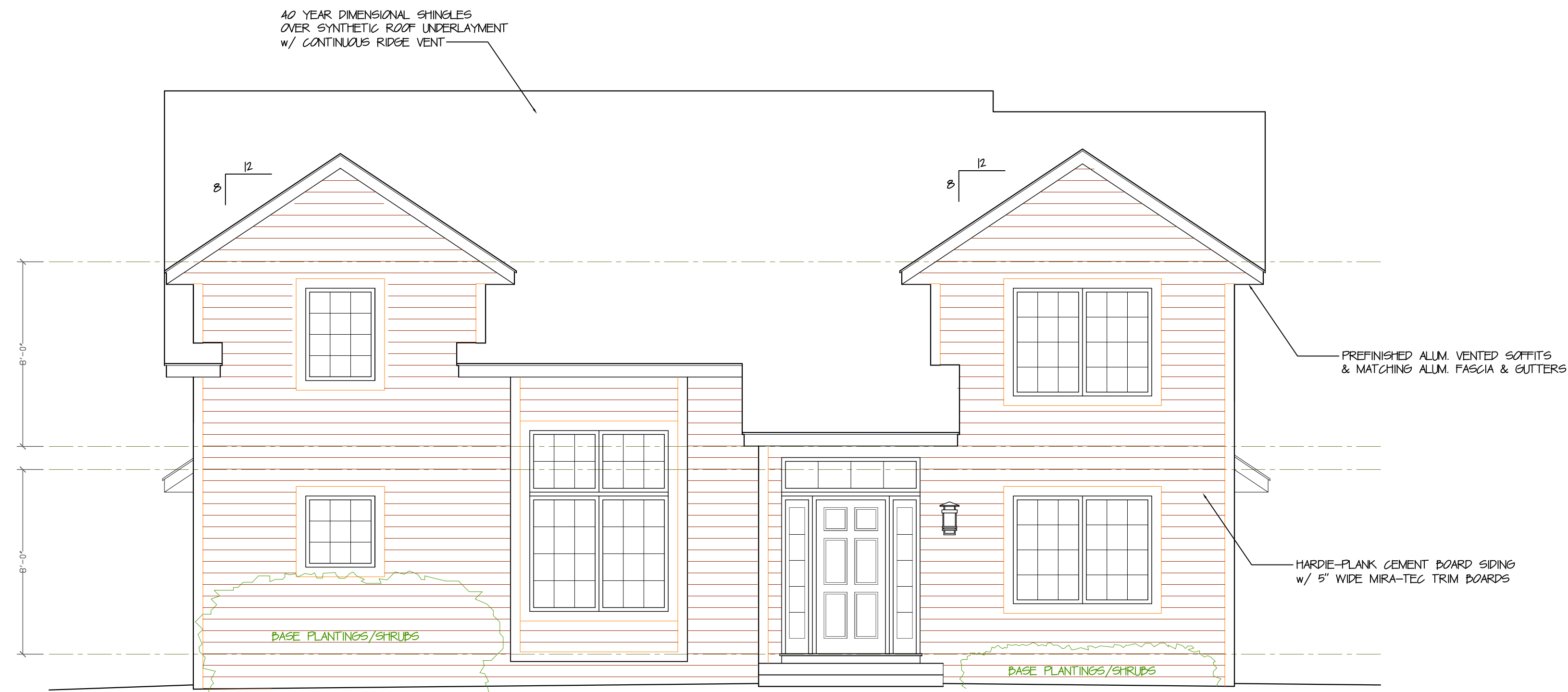
ROOF PLAN

A-5



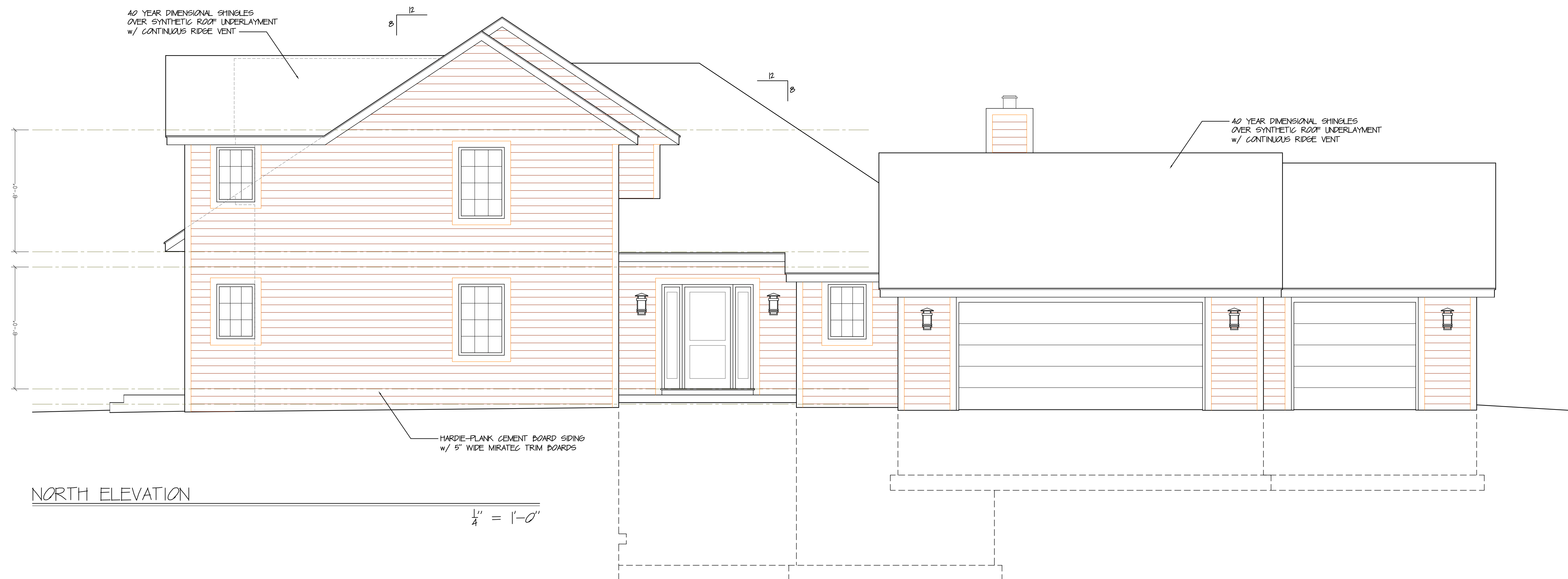
ROOF PLAN

$\frac{1}{4}'' = 1'-0''$



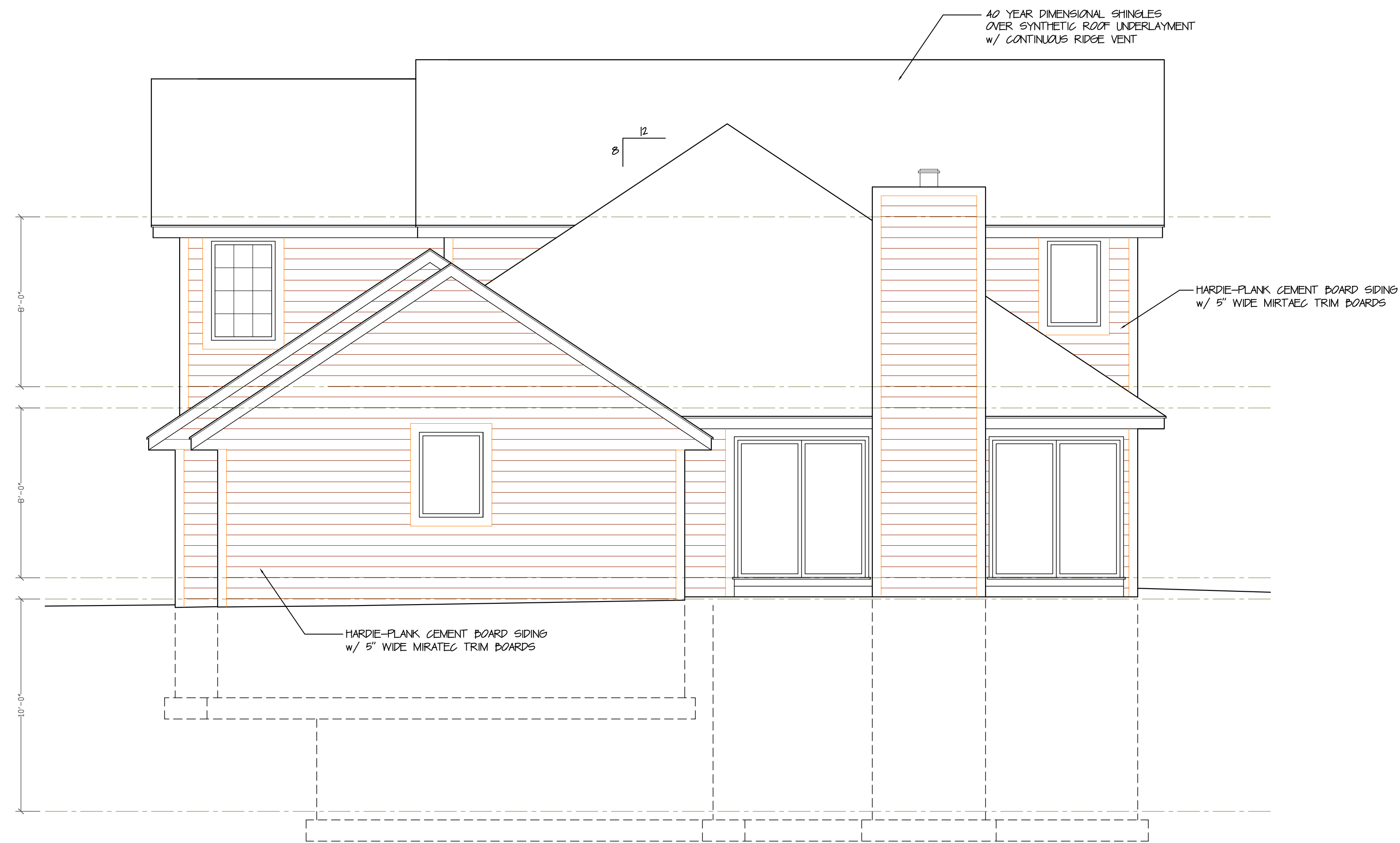
EAST ELEVATION

$\frac{1}{4}'' = 1'-0''$



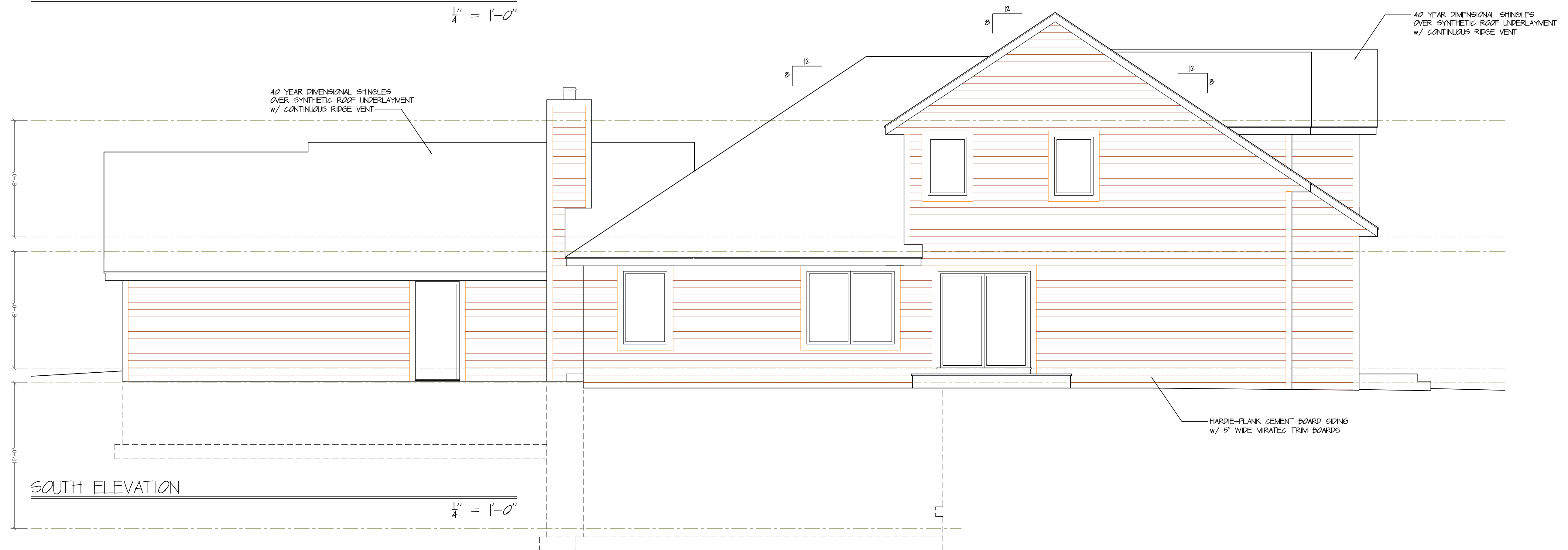
NORTH ELEVATION

$\frac{1}{4}'' = 1'-0''$



WEST ELEVATION

$\frac{1}{4}'' = 1'-0''$



SOUTH ELEVATION

$\frac{1}{4}'' = 1'-0''$



VILLAGE OF FOX POINT

MILWAUKEE COUNTY

WISCONSIN

VILLAGE HALL
7200 N. SANTA MONICA BLVD.
FOX POINT WI 53217-3505
414-351-8900
FAX 414-351-8909

**VILLAGE OF FOX POINT
NOTICE OF BOARD OF APPEALS MEETING
REQUEST FOR VARIANCE**

PLEASE TAKE NOTICE that the Fox Point Board of Appeals will meet in Schwemer Hall, 7200 N. Santa Monica Blvd, Fox Point, WI, for the date of Wednesday, September 28, 2022, at 5:00 p.m. to hear the following appeal for a variance:

1. **Case 2022-10: 8339 N Lake Drive.** The applicant is requesting a variance pertaining to Section 745-16 B. (2) of the Fox Point Village Code in the B Residence District, concerning a 70-foot setback from the centerline on Dean Road. The applicant is proposing a new addition to the home to be approximately 10.33 feet into the 70-foot Dean Road centerline setback.

Any interested party may attend this meeting and be heard concerning this case.

The applications, drawings, and related materials are available for viewing in the office of the Village Clerk/Treasurer, Monday through Thursday from 8:00 a.m. - 4:00 p.m. and on Friday from 8:00 a.m. to 12:00 noon.

Kelly A. Meyer, CMC/WCMC
Village Clerk Treasurer

Notice Sent: [September 6, 2022]
Posted: [September 6, 2022]



Village of Fox Point GIS
8339 N Lake Drive - BOA - VAR

DISCLAIMER: The Village of Fox Point Does not guarantee the accuracy of the material contained here in and is not responsible for any misuse or misrepresentation of this information or its derivatives.

SCALE: 1" = 188'



VILLAGE OF FOX POINT
7200 North Santa Monica Blvd
Fox Point, WI 53217
(414) 351-8900

Print Date: 9/1/2022

§ 745-16. B Residence District.

- A. Uses. In a B Residence District, no building or premises, unless otherwise provided in this chapter, shall be erected or used except for dwelling, together with accessory uses incident to the permitted use; provided always the accessory use does not constitute or become a public or private nuisance. **[Amended 11-11-2014 by Ord. No. 2014-08]**
- B. Areas and yards. In a B Residence District, no building may be erected, enlarged or altered except in conformity with the following:
- (1) The open area of a lot on which a dwelling is erected, or proposed to be erected, shall not be reduced to less than 15,000 square feet for each family. No building not erected for a dwelling shall occupy more than 20% of the gross area of the lot or exceed a height of 25 feet.
 - (2) A front yard of not less than 30 feet shall be provided for every building on a lot for which a setback is not hereinafter provided for. Every building shall be set back from the center line of each adjoining street or area reserved for highway purposes, or any extension or separated portion thereof hereafter established, not less than the street setback specified upon the Official Zoning Map, except that the following reductions may be made for corner lots from the setbacks specified on the Official Zoning Map: five feet when width of lot is more than 80 feet but less than 90 feet; 10 feet when width of lot is more than 70 feet but less than 80 feet; 15 feet when width of lot is 70 feet or less; provided, however, that no setback will be less than 15 feet plus 1/2 the width of the abutting road or area reserved for highway purposes.
 - (3) A side yard of not less than 10 feet shall be provided for on each side of every building.
 - (4) A rear yard of not less than 20 feet shall be provided for every building, except one of not less than 10 feet shall be provided for a building used for or classified as an accessory use.
 - (5) Every lot on which a building is erected shall have a minimum width of 80 feet.
 - (6) No single-family residence built or existing in this district shall have a height greater than 40 feet from the grade abutting the structure on the front side of the structure. For purposes of this subsection, the height of the building shall include the highest roof point of any interior portion of the structure which can be occupied, including, but not limited to, attic and storage structures and observatories which accommodate entry or occupancy by a person, but shall not include roof attachments such as chimneys, antennas or decorative cupolas. **[Amended 2-9-2021 by Ord. No. 2021-01]**

(7) ZONING.

- (ab) *Definition.* In this subsection “nonconforming use” means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.
- (am) *Grant of power.* For the purpose of promoting health, safety, morals or the general welfare of the community, the council may regulate and restrict by ordinance, subject to par. (hm), the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, subject to s. 66.10015 (3) the density of population, and the location and use of buildings, structures and land for trade, industry, mining, residence or other purposes if there is no discrimination against temporary structures. This subsection and any ordinance, resolution or regulation enacted or adopted under this section, shall be liberally construed in favor of the city and as minimum requirements adopted for the purposes stated. This subsection may not be deemed a limitation of any power granted elsewhere.
- (b) *Districts.* For any and all of said purposes the council may divide the city into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this section; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings and for the use of land throughout each district, but the regulations in one district may differ from those in other districts. No ordinance enacted or regulation adopted under this subsection may prohibit forestry operations that are in accordance with generally accepted forestry management practices, as defined under s. 823.075 (1) (d). The council may establish mixed-use districts that contain any combination of uses, such as industrial, commercial, public, or residential uses, in a compact urban form. The council may with the consent of the owners establish special districts, to be called planned development districts, with regulations in each, which in addition to those provided in par. (c), will over a period of time tend to promote the maximum benefit from coordinated area site planning, diversified location of structures and mixed compatible uses. Such regulations shall provide for a safe and efficient system for pedestrian and vehicular traffic, attractive recreation and landscaped open spaces, economic design and location of public and private utilities and community facilities and insure adequate standards of construction and planning. Such regulations may also provide for the development of the land in such districts with one or more principal structures and related accessory uses, and in planned development districts and mixed-use districts the regulations need not be uniform.
- (c) *Purposes in view.* Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to encourage the protection of groundwater resources; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; and to preserve burial sites, as defined in s. 157.70 (1) (b). Such regulations shall be made with reasonable consideration, among other things, of the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.
- (d) *Method of procedure.*
 1.
 - a. Upon the request of the city council, the city plan commission, the board of public land commissioners, or if the city has neither, the city plan committee of the city council shall prepare and recommend a district plan and regulations for the city. Following the formulation of tentative recommendations a public hearing shall be held by, at the council's option, the council, the plan commission, the board of public land commissioners or the plan committee. The entity holding the hearing shall consider any comments made, or submitted, by the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city. At least 10 days' prior written notice of any such hearings shall be given to the clerk of any municipality whose boundaries are within 1,000 feet of any lands included in the proposed plan and regulations, and to the commanding officer, or the officer's designee, of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city, but failure to give such notice shall not invalidate such district plan or regulations. Publication of a class 2 notice, under ch. 985, of the tentative recommendations and hearings thereon must be made once during each of the 2 weeks prior to such hearing. If the proposed district plan and regulations have the effect of changing the allowable use of any property within the city, the notice shall include either a map

showing the property affected by the plan and regulations or a description of the property affected by the plan and regulations and a statement that a map may be obtained from the city council.

- b. The council may make changes in the tentative recommendations after first submitting the proposed changes to the plan commission, board of public land commissioners or plan committee for recommendation and report and after publishing a class 2 notice, under ch. 985, of the proposed changes and hearings thereon as well as the notice to the clerk of any contiguous municipality and to the commanding officer, or the officer's designee, of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city, as required in subd. 1. a. Hearings on the proposed changes may be held by, at the council's option, the council, the plan commission, the board of public land commissioners or the plan committee. The entity holding the hearing shall consider any comments made, or submitted, by the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city. If the proposed changes to the proposed district plan and regulations have the effect of changing the allowable use of any property within the city, the notice shall include either a map showing the property affected by the changes or a description of the property affected by the changes and a statement that a map may be obtained from the city council.
2. The council may adopt amendments to an existing zoning ordinance after first submitting the proposed amendments to the city plan commission, board of public land commissioners or plan committee for recommendation and report and after providing the notices as required in subd. 1. b. of the proposed amendments and hearings thereon. In any city which is not located in whole or in part in a county with a population of 750,000 or more, if the proposed amendments would make any change in an airport affected area, as defined in sub. (6) (am) 1. b., the council shall mail a copy of such notice to the owner or operator of the airport bordered by the airport affected area. A hearing shall be held on the proposed amendments by, at the council's option, the council, the plan commission, the board of public land commissioners or the plan committee. The entity holding the hearing shall consider any comments made, or submitted, by the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city. If the proposed amendments have the effect of changing the allowable use of any property within the city, the notice shall include either a map showing the property affected by the amendments or a description of the property affected by the amendments and a statement that a map may be obtained from the city council. If the council does not receive recommendations and a report from the plan commission, board of public land commissioners or plan committee within 60 days of submitting the proposed amendments, the council may hold hearings without first receiving the recommendations and report.
- 2m. In any city which is not located in whole or in part in a county with a population of 750,000 or more, if a proposed amendment under subd. 2. would make any change in an airport affected area, as defined under sub. (6) (am) 1. b. and the owner or operator of the airport bordered by the airport affected area protests against the amendment, the amendment shall not become effective except by the favorable vote of two-thirds of the members of the council voting on the proposed change.
3. The council may repeal or repeal and reenact the entire district plan and all zoning regulations in accordance with subd. 1. The council may repeal or repeal and reenact a part or parts of the district plan and regulations in accordance with subds. 2. and 2m.
4. The city council shall maintain a list of persons who submit a written or electronic request to receive notice of any proposed zoning action that may be taken under subd. 1. a. or b. or 2. that affects the allowable use of the person's property. Annually, the city council shall inform residents of the city that they may add their names to the list. The city council may satisfy this requirement to provide such information by any of the following means: publishing a 1st class notice under ch. 985; publishing on the city's Internet site; 1st class mail; or including the information in a mailing that is sent to all property owners. If the plan commission, the board of public land commissioners, or city plan committee of the city council completes action on any tentative recommendations that are noticed under subd. 1. a., proposed changes to a proposed district plan and regulations that are submitted under subd. 1. b., or proposed amendments that are submitted under subd. 2., and the city council is prepared to vote on the tentative recommendations, proposed changes to a proposed district plan, and regulations or proposed amendments, the city council shall send a notice, which contains a copy or summary of the tentative recommendations, proposed changes to a proposed district plan, and regulations or proposed amendments, to each person on the list whose property, the allowable use of which, may be affected by the tentative recommendations or proposed changes or amendments. The notice shall be by mail or in any reasonable form that is agreed to by the person and the city council, including electronic mail, voice mail, or text message. The city council may charge each person on the list who receives a notice by 1st class mail a fee that does not exceed the approximate cost of providing the notice to the person. An ordinance or amendment that is subject to this subdivision may take effect even if the city council fails to send the notice that is required by this subdivision.

(da) *Interim zoning.* The common council of any city which has not adopted a zoning ordinance may, without referring the matter to the plan commission, enact an interim zoning ordinance to preserve existing uses while the comprehensive zoning plan is being prepared. Such ordinance may be enacted as is an ordinary ordinance but shall be effective for no longer than 2 years after its enactment.

(de) *Conditional use permits.*

1. In this paragraph:
 - a. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a city, but does not include a variance.
 - b. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.
2.
 - a. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.
 - b. The requirements and conditions described under subd. 2. a. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the city relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The city's decision to approve or deny the permit must be supported by substantial evidence.
3. Upon receipt of a conditional use permit application, and following publication in the city of a class 2 notice under ch. 985, the city shall hold a public hearing on the application.
4. Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the city may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the city zoning board.
5. If a city denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in par. (e) 10.

(e) *Board of appeals.*

1. The council which enacts zoning regulations pursuant to this section shall by ordinance provide for the appointment of a board of appeals, and shall provide in such regulations that said board of appeals may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. Nothing in this subdivision shall preclude the granting of special exceptions by the city plan commission or the common council in accordance with the zoning regulations adopted pursuant to this section which were in effect on July 7, 1973 or adopted after that date.
2. The board of appeals shall consist of 5 members appointed by the mayor subject to confirmation of the common council for terms of 3 years, except that of those first appointed one shall serve for one year, 2 for 2 years and 2 for 3 years. The members of the board shall serve at such compensation to be fixed by ordinance, and shall be removable by the mayor for cause upon written charges and after public hearing. The mayor shall designate one of the members as chairperson. The board may employ a secretary and other employees. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The mayor shall appoint, for staggered terms of 3 years, 2 alternate members of such board, in addition to the 5 members above provided for. Annually, the mayor shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate shall act, with full power, only when a member of the board refuses to vote because of interest or when a member is absent. The 2nd alternate shall so act only when the 1st alternate so refuses or is absent or when more than one member of the board so refuses or is absent. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternates.
3. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this section. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.
- 3m. If a quorum is present, the board of appeals may take action under this subsection by a majority vote of the members present.

4. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
5. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with the officer, that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.
6. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. In any action involving a listed property, as defined in s. 44.31 (4), the board shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the planning commission.
7.
 - a. In this subdivision, "area variance" means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this paragraph. In this subdivision, "use variance" means an authorization by the board of appeals under this paragraph for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.
 - b. The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.
 - c. The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.
 - d. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.
 - e. The council of a city may enact an ordinance specifying an expiration date for a variance granted under this subdivision if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of appeals does not specify an expiration date for the variance, a variance granted under this subdivision does not expire unless, at the time it is granted, the board of appeals specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012.
 - f. A variance granted under this subdivision runs with the land.
8. In exercising the above mentioned powers such board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.
10. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by

certiorari. The court shall not stay proceedings upon the decision appealed from, but may, on application, on notice to the board of appeals and on due cause shown, grant a restraining order. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

14. Costs shall not be allowed against the board unless it shall appear to the court that the board acted with gross negligence or in bad faith, or with malice, in making the decision appealed from.

15. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

(ea) *Filing fees.* The common council may by ordinance or resolution establish reasonable fees for the filing of a petition for amendment of the zoning ordinance or official map, or for filing an appeal to the board of appeals.

(em) *Historic preservation.*

1. Subject to subds. 2. and 2m., a city, as an exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, may regulate by ordinance, or if a city contains any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall, not later than 1995, enact an ordinance to regulate, any place, structure or object with a special character, historic, archaeological or aesthetic interest, or other significant value, for the purpose of preserving the place, structure or object and its significant characteristics. Subject to subds. 2., 2m., and 3., a city may create a landmarks commission to designate historic or archaeological landmarks and establish historic districts. Subject to subds. 2. and 2m., the city may regulate, or if the city contains any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall regulate, all historic or archaeological landmarks and all property within each historic district to preserve the historic or archaeological landmarks and property within the district and the character of the district.

2. Before the city designates a historic landmark or establishes a historic district, the city shall hold a public hearing. If the city proposes to designate a place, structure, or object as a historic landmark or establish a historic district that includes a place, structure, or object, the city shall, by 1st class mail, notify the owner of the place, structure, or object of the determination and of the time and place of the public hearing on the determination.

2m. In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this paragraph, a city shall allow an owner to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.

3. An owner of property that is affected by a decision of a city landmarks commission may appeal the decision to the common council. The common council may overturn a decision of the commission by a majority vote of the common council.

(f) *Enforcement and remedies.*

1. The council may provide by ordinance for the enforcement of this section and of any ordinance or regulation made thereunder. In case of a violation of this section or of such ordinance or regulation such council may provide for the punishment by fine and by imprisonment for failure to pay such fine. It is also empowered to provide civil penalties for such violation.

2. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is or is proposed to be used in violation of this section or of any ordinance or other regulation made under authority conferred hereby, the proper authorities of the city, or any adjacent or neighboring property owner who would be specially damaged by such violation may, in addition to other remedies, institute appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about such premises.

(g) *Conflict with other laws.* Wherever the regulations made under authority of this section require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this section shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this section, the provisions of such statute or local ordinance or regulation shall govern.

(gm) *Permits.* Neither the city council, nor the city plan commission, nor the city plan committee of the city council, nor the board of appeals may condition or withhold approval of a permit under this section based upon the

property owner entering into a contract, or discontinuing, modifying, extending, or renewing any contract, with a 3rd party under which the 3rd party is engaging in a lawful use of the property.

(h) *Nonconforming uses.* The continued lawful use of a building, premises, structure, or fixture existing at the time of the adoption or amendment of a zoning ordinance may not be prohibited although the use does not conform with the provisions of the ordinance. The nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building, premises, structure, or fixture shall not during its life exceed 50 percent of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use. If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the ordinance.

(ham) *Manufactured home communities.* Notwithstanding par. (h), a manufactured home community licensed under s. 101.935 that is a legal nonconforming use continues to be a legal nonconforming use notwithstanding the occurrence of any of the following activities within the community:

1. Repair or replacement of homes.
2. Repair or replacement of infrastructure.

(hb) *Repair, rebuilding, and maintenance of certain nonconforming structures.*

1. In this paragraph:
 - a. "Development regulations" means the part of a zoning ordinance that applies to elements including setback, height, lot coverage, and side yard.
 - b. "Nonconforming structure" means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance.
2. An ordinance may not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.

(hc) *Restoration or replacement of certain nonconforming structures.*

1. Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this subsection may not prohibit the restoration or replacement of a nonconforming structure if the structure will be restored to, or replaced at, the size, subject to subd. 2., location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:
 - a. The nonconforming structure was damaged or destroyed on or after March 2, 2006.
 - b. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.
2. An ordinance enacted under this subsection to which subd. 1. applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.

(he) *Antenna facilities.* The governing body of a city may not enact an ordinance or adopt a resolution on or after May 6, 1994, or continue to enforce an ordinance or resolution on or after May 6, 1994, that affects satellite antennas with a diameter of 2 feet or less unless one of the following applies:

1. The ordinance or resolution has a reasonable and clearly defined aesthetic or public health or safety objective.
2. The ordinance or resolution does not impose an unreasonable limitation on, or prevent, the reception of satellite-delivered signals by a satellite antenna with a diameter of 2 feet or less.
3. The ordinance or resolution does not impose costs on a user of a satellite antenna with a diameter of 2 feet or less that exceed 10 percent of the purchase price and installation fee of the antenna and associated equipment.

(hf) *Amateur radio antennas.* The governing body of a city may not enact an ordinance or adopt a resolution on or after April 17, 2002, or continue to enforce an ordinance or resolution on or after April 17, 2002, that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:

1. The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.
2. The ordinance or resolution reasonably accommodates amateur radio communications.

(hg) *Amortization prohibited.*

1. In this paragraph, "amortization ordinance" means an ordinance that allows the continuance of the lawful use of a nonconforming building, premises, structure, or fixture that may be lawfully used as described under par. (h), but only for a specified period of time, after which the lawful use of such building, premises, structure, or fixture must be discontinued without the payment of just compensation.
2. Subject to par. (h), an ordinance enacted under this subsection may not require the removal of a nonconforming building, premises, structure, or fixture by an amortization ordinance.

(hi) *Payday lenders.*

1. In this paragraph:

- a. "Licensee" has the meaning given in s. 138.14 (1) (i).
 - b. "Payday lender" means a business, owned by a licensee, that makes payday loans.
 - c. "Payday loan" has the meaning given in s. 138.14 (1) (k).
2. Except as provided in subds. 3., 4., and 5., no payday lender may operate in a city unless it receives a permit to do so from the city council, and the city council may not issue a permit to a payday lender if any of the following applies:
 - a. The payday lender would be located within 1,500 feet of another payday lender.
 - b. The payday lender would be located within 150 feet of a single-family or 2-family residential zoning district.
 3. A city may regulate payday lenders by enacting a zoning ordinance that contains provisions that are more strict than those specified in subd. 2.
 4. If a city has enacted an ordinance regulating payday lenders that is in effect on January 1, 2011, the ordinance may continue to apply and the city may continue to enforce the ordinance, but only if the ordinance is at least as restrictive as the provisions of subd. 2.
 5. Notwithstanding the provisions of subd. 4., if a payday lender that is doing business on January 1, 2011, from a location that does not comply with the provisions of subd. 2., the payday lender may continue to operate from that location notwithstanding the provisions of subd. 2.
- (hm) *Migrant labor camps.* The council of a city may not enact an ordinance or adopt a resolution that interferes with any repair or expansion of migrant labor camps, as defined in s. 103.90 (3), that are in existence on May 12, 1992, if the repair or expansion is required by an administrative rule promulgated by the department of workforce development under ss. 103.90 to 103.97. An ordinance or resolution of a city that is in effect on May 12, 1992, and that interferes with any repair or expansion of existing migrant labor camps that is required by such an administrative rule is void.
- (i) *Community and other living arrangements.* For purposes of this section, the location of a community living arrangement for adults, as defined in s. 46.03 (22), a community living arrangement for children, as defined in s. 48.743 (1), a foster home, as defined in s. 48.02 (6), or an adult family home, as defined in s. 50.01 (1), in any city shall be subject to the following criteria:
1. No community living arrangement may be established after March 28, 1978 within 2,500 feet, or any lesser distance established by an ordinance of the city, of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the city. Two community living arrangements may be adjacent if the city authorizes that arrangement and if both facilities comprise essential components of a single program.
 2. Community living arrangements shall be permitted in each city without restriction as to the number of facilities, so long as the total capacity of such community living arrangements does not exceed 25 or one percent of the city's population, whichever is greater. When the capacity of the community living arrangements in the city reaches that total, the city may prohibit additional community living arrangements from locating in the city. In any city of the 1st, 2nd, 3rd or 4th class, when the capacity of community living arrangements in an aldermanic district reaches 25 or one percent of the population, whichever is greater, of the district, the city may prohibit additional community living arrangements from being located within the district. Agents of a facility may apply for an exception to the requirements of this subdivision, and such exceptions may be granted at the discretion of the city.
- 2m. A foster home that is the primary domicile of a foster parent and that is licensed under s. 48.62 or an adult family home certified under s. 50.032 (1m) (b) shall be a permitted use in all residential areas and is not subject to subds. 1. and 2. except that foster homes operated by corporations, child welfare agencies, churches, associations, or public agencies shall be subject to subds. 1. and 2.
- 2r.
- a. No adult family home described in s. 50.01 (1) (b) may be established within 2,500 feet, or any lesser distance established by an ordinance of the city, of any other adult family home described in s. 50.01 (1) (b) or any community living arrangement. An agent of an adult family home described in s. 50.01 (1) (b) may apply for an exception to this requirement, and the exception may be granted at the discretion of the city.
 - b. An adult family home described in s. 50.01 (1) (b) that meets the criteria specified in subd. 2r. a. and that is licensed under s. 50.033 (1m) (b) is permitted in the city without restriction as to the number of adult family homes and may locate in any residential zone, without being required to obtain special zoning permission except as provided in subd. 9.
3. In all cases where the community living arrangement has capacity for 8 or fewer persons being served by the program, meets the criteria listed in subds. 1. and 2., and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to locate in any residential zone, without being required to obtain special zoning permission except as provided in subd. 9.
 4. In all cases where the community living arrangement has capacity for 9 to 15 persons being served by the program, meets the criteria listed in subds. 1. and 2., and is licensed, operated, or permitted under the

authority of the department of health services or the department of children and families, that facility is entitled to locate in any residential area except areas zoned exclusively for single-family or 2-family residences except as provided in subd. 9., but is entitled to apply for special zoning permission to locate in those areas. The city may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

5. In all cases where the community living arrangement has capacity for serving 16 or more persons, meets the criteria listed in subds. 1. and 2., and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The city may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.
6. The department of health services shall designate a single subunit within that department to maintain appropriate records indicating the location and number of persons served by each community living arrangement for adults, and such information shall be available to the public. The department of children and families shall designate a single subunit within that department to maintain appropriate records indicating the location and number of persons served by each community living arrangement for children, and such information shall be available to the public.
7. In this paragraph, "special zoning permission" includes but is not limited to the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.
8. The attorney general shall take all necessary action, upon the request of the department of health services or the department of children and families, to enforce compliance with this paragraph.
9. Not less than 11 months nor more than 13 months after the first licensure of an adult family home under s. 50.033 or of a community living arrangement and every year thereafter, the common council of a city in which a licensed adult family home or a community living arrangement is located may make a determination as to the effect of the adult family home or community living arrangement on the health, safety or welfare of the residents of the city. The determination shall be made according to the procedures provided under subd. 10. If the common council determines that the existence in the city of a licensed adult family home or a community living arrangement poses a threat to the health, safety or welfare of the residents of the city, the common council may order the adult family home or community living arrangement to cease operation unless special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the adult family home or community living arrangement. The adult family home or community living arrangement must cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.
- 9m. The fact that an individual with acquired immunodeficiency syndrome or a positive HIV test, as defined in s. 252.01 (2m), resides in a community living arrangement with a capacity for 8 or fewer persons may not be used under subd. 9. to assert or prove that the existence of the community living arrangement in the city poses a threat to the health, safety or welfare of the residents of the city.
10. A determination made under subd. 9. shall be made after a hearing before the common council. The city shall provide at least 30 days' notice to the licensed adult family home or the community living arrangement that such a hearing will be held. At the hearing, the licensed adult family home or the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The common council may call witnesses and may issue subpoenas. All witnesses shall be sworn by the common council. The common council shall take notes of the testimony and shall mark and preserve all exhibits. The common council may, and upon request of the licensed adult family home or the community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the city. Within 20 days after the hearing, the common council shall mail or deliver to the licensed adult family home or the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

NOTICE OF APPEAL & APPLICATION FOR REVIEW

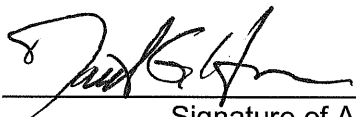
1. Name of Appellant David Hanson / Heidi Hanson
- Address of Appellant 8027 N. Navajo Road
- Phone Number 414-351-3876 414-298-8324 414-881-3015
Home Work Cell
- E-mail Address dhanson@reinhartlaw.com
2. Address of Property 8027 N. Navajo Road
- Present Use of Property Residence
- Proposed Use of Property Residence
- Owner's Name and Address if Different than Above _____
3. Has a Previous Appeal or Application Been Made to the Board of Appeals with Respect to This Property?
Yes () **No** () If Yes, State the Nature of Previous Appeal or Application
- _____
- Disposition of Previous Appeal _____
- Date of Decision in Previous Case _____
4. Date of Decision or Order of Administrative Official from which Appeal is Taken _____
- Date of Notice of Such Decision Received by Appellant _____
5. Purpose of Grounds of Appeal or Application. Check Below the Relief Requested by This Appeal or Application:
- ☐ A. Request for interpretation of Zoning Code and reversal of order, requirement, decision or determination of administrative official. Attach separate sheet listing reasons why you claim this order, requirement, decision or determination is erroneous.
- ☒ B. Request for variance. Attach separate sheet explaining the following:
1. Variance requested.
2. What special conditions exist which will cause unnecessary hardship if the variance requested is not granted.

Appellant Name: David Hanson / Heidi Hanson

Village of Fox Point - Board of Appeals
Notice of Appeal and Application for Review

3. Why the variance requested is not contrary to the public interest and will not endanger public safety and welfare.
4. Why the variance requested will be in accord with the spirit of the Zoning Code.
5. How the variance, if granted, will cause substantial justice to be done.
- ☐ C. Request for a special exception from the Fence Ordinance. Please obtain a copy of the Fence Ordinance to determine specific requirements. Attach a separate sheet or related materials explaining the following:
 1. Height of the proposed fence.
 2. Exact location of the proposed fence.
 3. Indicate whether the fence is replacement fence.
 4. Type of fence and materials.
- ☐ D. Other: _____
State relief requested and attach separate sheet, listing reasons why appellant is entitled to such relief.
6. Each appeal or application must be accompanied by a scale drawing showing the location and size of property, existing improvements, all abutting properties, and improvements thereon, and the requested change or addition. A \$200 filing fee must also accompany this application.
7. All applications for variances or special exceptions must include an area plat map, survey, pictures or other documentation depicting the location of the structural improvements on adjacent properties. These materials must be reasonably accurate in the judgment of the Board of Appeals.

I hereby swear that all of the above statements and the statements contained in any papers or plans submitted herewith are true to the best of my knowledge and belief.



Signature of Appellant

08/31/2022

Date

For Office Use Only:

Date Application Received 8-31-2022 Receipt Number for \$200 Filing Fee 1.058032

Case Number 2022-11 Hearing Date 9-28-2022

Disposition _____

Request for Variance

To: Village of Fox Point Board of Appeals
From: Nick Burris (On behalf of David & Heidi Hanson)
Date: 8/31/2022
Subject: Hanson Garage | 8027 N. Navajo Road

Per Village of Fox Point Board of Appeals Application, below is a list of items required explaining the Request for Variance:

1. Variance Requested

- a. Existing garage is to be razed and a new garage is proposed to be constructed.
- b. Existing garage distance to rear setback is not compliant with current zoning code. Current rear setback is 6.2' at closest point. Existing garage is at a slight angle to the rear setback.
- c. New placement of garage will meet 10' setback requirements to the South property line.
- d. Owner is requesting variance to maintain existing 6.2' rear setback from property line with new garage.

2. What special conditions exist which will cause unnecessary hardship if the variance requested is not granted.

- a. Meeting the zoning ordinance setback of 10' on the West property line will push the new garage to the East and constrict the vehicular traffic patterns as well as become a detriment to the spatial layout between the main residence and garage.

3. Why the variance requested is not contrary to the public interest and will not endanger public safety and welfare.

- a. The existing garage and new garage placement at the "rear" of the property and would not endanger public safety or welfare.

4. Why the variance requested will be in accord with the spirit of the Zoning code.

- a. The proposed placement of the garage will meeting the Zoning code to the South property line and the rear setback will maintain a previously compliant condition.

5. How the variance, if granted, will cause substantial justice to be done.

- a. As the use of vehicle travel has increased and the size of the stored vehicles has grown since the date of the existing garage being constructed, the owner is looking to build a more usable and functioning garage that will meet the needs and the physical requirements of today's family. The owner is looking to make these improvements without intertuping the spatial relationships between the existing residence and new garage.



Existing Garage - East Elevation



Existing Garage - North Elevation





Existing Garage - South Elevation





Existing Garage - West Elevation





Existing Residence – East Elevation



VILLAGE OF FOX POINT
7200 N. SANTA MONICA BLVD
FOX POINT WI 53217

414-351-8900

Receipt No: 1.058032

Aug 31, 2022

8027 N Navajo Road - BOA

Previous Balance:	.00
LICENSES & PERMITS - OTHER PERMIT	200.00
10-44540 OTHER PERMIT	
Total:	200.00
CHECK	200.00
Check No: 16485	
Payor: 8027 N Navajo Road - BOA	
Total Applied:	200.00
Change Tendered:	.00

08/31/2022 10:33 AM

Gabor Design Build, LLC

16485

Village of Fox Point

Date	Type	Reference	Original Amt.	Balance Due	8/30/2022	Discount	Payment
8/30/2022	Bill	Hanson Appeal	200.00	200.00			200.00
					Check Amount		200.00

CHECKING-4184

Hanson - Board of Appeals

200.00



VILLAGE OF FOX POINT

MILWAUKEE COUNTY

WISCONSIN

VILLAGE HALL
7200 N. SANTA MONICA BLVD.
FOX POINT WI 53217-3505
414-351-8900
FAX 414-351-8909

**VILLAGE OF FOX POINT
NOTICE OF BOARD OF APPEALS MEETING
REQUEST FOR VARIANCE**

PLEASE TAKE NOTICE that the Fox Point Board of Appeals will meet in Schwemer Hall, 7200 N. Santa Monica Blvd, Fox Point, WI, for the date of Wednesday, September 28, 2022, at 5:00 p.m. to hear the following appeal for a variance:

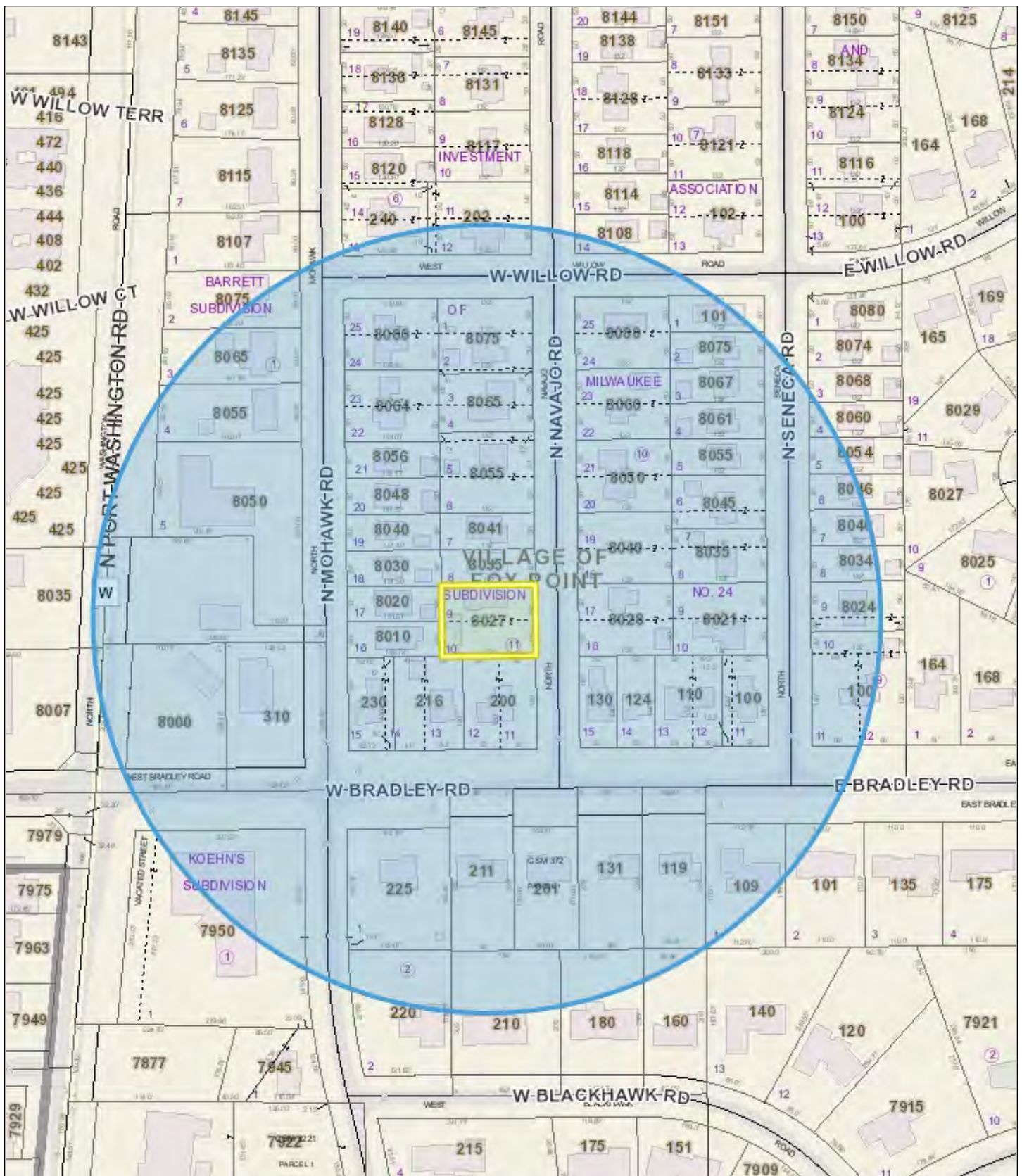
1. **Case 2022-11: 8027 N Navajo Road.** The applicant is requesting a variance pertaining to Section 745-17 B. (4) of the Fox Point Village Code in the C Residence District, concerning rear yard setback requirement of not less than 10 feet. The applicant is proposing to install a new garage 6.2 feet from the rear property line.

Any interested party may attend this meeting and be heard concerning this case.

The applications, drawings, and related materials are available for viewing in the office of the Village Clerk/Treasurer, Monday through Thursday from 8:00 a.m. - 4:00 p.m. and on Friday from 8:00 a.m. to 12:00 noon.

Kelly A. Meyer, CMC/WCMC
Village Clerk Treasurer

Notice Sent: [September 6, 2022]
Posted: [September 6, 2022]



Village of Fox Point GIS 8027 N Navajo - BOA Variance

DISCLAIMER: The Village of Fox Point Does not guarantee the accuracy of the material contained here in and is not responsible for any misuse or misrepresentation of this information or its derivatives.

SCALE: 1" = 188'



VILLAGE OF FOX POINT
7200 North Santa Monica Blvd
Fox Point, WI 53217
(414) 351-8900

Print Date: 9/1/2022

§ 745-17. C Residence District.

- A. Uses. In a C Residence District, no building or premises, unless otherwise provided in this chapter, shall be erected or used except for dwelling, together with accessory uses incident to the permitted use, provided always the accessory use does not constitute or become a public or private nuisance. **[Amended 11-11-2014 by Ord. No. 2014-08]**
- B. Areas and yards. In a C Residence District, no building may be erected, enlarged or altered except in conformity with the following:
- (1) The open area of a lot upon which a dwelling is erected, or proposed to be erected, shall not be reduced to less than 10,500 square feet for each family. No building not erected for a dwelling shall occupy more than 15% of the gross area of the lot or exceed a height of 25 feet above the proposed grade of the ground.
 - (2) A front yard of not less than 30 feet shall be provided for every building on a lot for which a setback is not hereinafter provided for. Every building shall be set back from the center line of each adjoining street or area reserved for highway purposes, or any extension or separated portion thereof hereafter established, not less than the street setback specified upon the Official Zoning Map, except that the following reductions may be made for a corner lot from the setbacks specified on the Official Zoning Map: five feet when width of lot is more than 80 feet but less than 90 feet; 10 feet when width of lot is more than 70 feet but less than 80 feet; 15 feet when width of lot is 70 feet or less; provided, however, that no setbacks will be less than 15 feet plus 1/2 the width of the abutting road or area reserved for highway purposes.
 - (3) A side yard of not less than 10 feet shall be provided for on each side of every building.
 - (4) A rear yard of not less than 20 feet shall be provided for every building, except one of not less than 10 feet shall be provided for a building used for or classified as an accessory use.
 - (5) Every lot on which a building is erected shall have an average minimum width of 80 feet.
 - (6) No single-family residence built or existing in this district shall have a height greater than 35 feet above the lowest point of the lot grade abutting the structure. For purposes of this subsection, the height of the building shall include the highest roof point of any interior portion of the structure which can be occupied, including, but not limited to, attic and storage structures and observatories which accommodate entry or occupancy by a person, but shall not include roof attachments such as chimneys, antennas or decorative cupolas. **[Amended 2-9-2021 by Ord. No. 2021-01]**

(7) ZONING.

- (ab) *Definition.* In this subsection “nonconforming use” means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.
- (am) *Grant of power.* For the purpose of promoting health, safety, morals or the general welfare of the community, the council may regulate and restrict by ordinance, subject to par. (hm), the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, subject to s. 66.10015 (3) the density of population, and the location and use of buildings, structures and land for trade, industry, mining, residence or other purposes if there is no discrimination against temporary structures. This subsection and any ordinance, resolution or regulation enacted or adopted under this section, shall be liberally construed in favor of the city and as minimum requirements adopted for the purposes stated. This subsection may not be deemed a limitation of any power granted elsewhere.
- (b) *Districts.* For any and all of said purposes the council may divide the city into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this section; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings and for the use of land throughout each district, but the regulations in one district may differ from those in other districts. No ordinance enacted or regulation adopted under this subsection may prohibit forestry operations that are in accordance with generally accepted forestry management practices, as defined under s. 823.075 (1) (d). The council may establish mixed-use districts that contain any combination of uses, such as industrial, commercial, public, or residential uses, in a compact urban form. The council may with the consent of the owners establish special districts, to be called planned development districts, with regulations in each, which in addition to those provided in par. (c), will over a period of time tend to promote the maximum benefit from coordinated area site planning, diversified location of structures and mixed compatible uses. Such regulations shall provide for a safe and efficient system for pedestrian and vehicular traffic, attractive recreation and landscaped open spaces, economic design and location of public and private utilities and community facilities and insure adequate standards of construction and planning. Such regulations may also provide for the development of the land in such districts with one or more principal structures and related accessory uses, and in planned development districts and mixed-use districts the regulations need not be uniform.
- (c) *Purposes in view.* Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to encourage the protection of groundwater resources; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; and to preserve burial sites, as defined in s. 157.70 (1) (b). Such regulations shall be made with reasonable consideration, among other things, of the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.
- (d) *Method of procedure.*
1.
 - a. Upon the request of the city council, the city plan commission, the board of public land commissioners, or if the city has neither, the city plan committee of the city council shall prepare and recommend a district plan and regulations for the city. Following the formulation of tentative recommendations a public hearing shall be held by, at the council's option, the council, the plan commission, the board of public land commissioners or the plan committee. The entity holding the hearing shall consider any comments made, or submitted, by the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city. At least 10 days' prior written notice of any such hearings shall be given to the clerk of any municipality whose boundaries are within 1,000 feet of any lands included in the proposed plan and regulations, and to the commanding officer, or the officer's designee, of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city, but failure to give such notice shall not invalidate such district plan or regulations. Publication of a class 2 notice, under ch. 985, of the tentative recommendations and hearings thereon must be made once during each of the 2 weeks prior to such hearing. If the proposed district plan and regulations have the effect of changing the allowable use of any property within the city, the notice shall include either a map

showing the property affected by the plan and regulations or a description of the property affected by the plan and regulations and a statement that a map may be obtained from the city council.

- b. The council may make changes in the tentative recommendations after first submitting the proposed changes to the plan commission, board of public land commissioners or plan committee for recommendation and report and after publishing a class 2 notice, under ch. 985, of the proposed changes and hearings thereon as well as the notice to the clerk of any contiguous municipality and to the commanding officer, or the officer's designee, of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city, as required in subd. 1. a. Hearings on the proposed changes may be held by, at the council's option, the council, the plan commission, the board of public land commissioners or the plan committee. The entity holding the hearing shall consider any comments made, or submitted, by the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city. If the proposed changes to the proposed district plan and regulations have the effect of changing the allowable use of any property within the city, the notice shall include either a map showing the property affected by the changes or a description of the property affected by the changes and a statement that a map may be obtained from the city council.
2. The council may adopt amendments to an existing zoning ordinance after first submitting the proposed amendments to the city plan commission, board of public land commissioners or plan committee for recommendation and report and after providing the notices as required in subd. 1. b. of the proposed amendments and hearings thereon. In any city which is not located in whole or in part in a county with a population of 750,000 or more, if the proposed amendments would make any change in an airport affected area, as defined in sub. (6) (am) 1. b., the council shall mail a copy of such notice to the owner or operator of the airport bordered by the airport affected area. A hearing shall be held on the proposed amendments by, at the council's option, the council, the plan commission, the board of public land commissioners or the plan committee. The entity holding the hearing shall consider any comments made, or submitted, by the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city. If the proposed amendments have the effect of changing the allowable use of any property within the city, the notice shall include either a map showing the property affected by the amendments or a description of the property affected by the amendments and a statement that a map may be obtained from the city council. If the council does not receive recommendations and a report from the plan commission, board of public land commissioners or plan committee within 60 days of submitting the proposed amendments, the council may hold hearings without first receiving the recommendations and report.
- 2m. In any city which is not located in whole or in part in a county with a population of 750,000 or more, if a proposed amendment under subd. 2. would make any change in an airport affected area, as defined under sub. (6) (am) 1. b. and the owner or operator of the airport bordered by the airport affected area protests against the amendment, the amendment shall not become effective except by the favorable vote of two-thirds of the members of the council voting on the proposed change.
3. The council may repeal or repeal and reenact the entire district plan and all zoning regulations in accordance with subd. 1. The council may repeal or repeal and reenact a part or parts of the district plan and regulations in accordance with subs. 2. and 2m.
4. The city council shall maintain a list of persons who submit a written or electronic request to receive notice of any proposed zoning action that may be taken under subd. 1. a. or b. or 2. that affects the allowable use of the person's property. Annually, the city council shall inform residents of the city that they may add their names to the list. The city council may satisfy this requirement to provide such information by any of the following means: publishing a 1st class notice under ch. 985; publishing on the city's Internet site; 1st class mail; or including the information in a mailing that is sent to all property owners. If the plan commission, the board of public land commissioners, or city plan committee of the city council completes action on any tentative recommendations that are noticed under subd. 1. a., proposed changes to a proposed district plan and regulations that are submitted under subd. 1. b., or proposed amendments that are submitted under subd. 2., and the city council is prepared to vote on the tentative recommendations, proposed changes to a proposed district plan, and regulations or proposed amendments, the city council shall send a notice, which contains a copy or summary of the tentative recommendations, proposed changes to a proposed district plan, and regulations or proposed amendments, to each person on the list whose property, the allowable use of which, may be affected by the tentative recommendations or proposed changes or amendments. The notice shall be by mail or in any reasonable form that is agreed to by the person and the city council, including electronic mail, voice mail, or text message. The city council may charge each person on the list who receives a notice by 1st class mail a fee that does not exceed the approximate cost of providing the notice to the person. An ordinance or amendment that is subject to this subdivision may take effect even if the city council fails to send the notice that is required by this subdivision.

(da) *Interim zoning.* The common council of any city which has not adopted a zoning ordinance may, without referring the matter to the plan commission, enact an interim zoning ordinance to preserve existing uses while the comprehensive zoning plan is being prepared. Such ordinance may be enacted as is an ordinary ordinance but shall be effective for no longer than 2 years after its enactment.

(de) *Conditional use permits.*

1. In this paragraph:
 - a. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a city, but does not include a variance.
 - b. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.
2.
 - a. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.
 - b. The requirements and conditions described under subd. 2. a. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the city relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The city's decision to approve or deny the permit must be supported by substantial evidence.
3. Upon receipt of a conditional use permit application, and following publication in the city of a class 2 notice under ch. 985, the city shall hold a public hearing on the application.
4. Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the city may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the city zoning board.
5. If a city denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in par. (e) 10.

(e) *Board of appeals.*

1. The council which enacts zoning regulations pursuant to this section shall by ordinance provide for the appointment of a board of appeals, and shall provide in such regulations that said board of appeals may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. Nothing in this subdivision shall preclude the granting of special exceptions by the city plan commission or the common council in accordance with the zoning regulations adopted pursuant to this section which were in effect on July 7, 1973 or adopted after that date.
2. The board of appeals shall consist of 5 members appointed by the mayor subject to confirmation of the common council for terms of 3 years, except that of those first appointed one shall serve for one year, 2 for 2 years and 2 for 3 years. The members of the board shall serve at such compensation to be fixed by ordinance, and shall be removable by the mayor for cause upon written charges and after public hearing. The mayor shall designate one of the members as chairperson. The board may employ a secretary and other employees. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The mayor shall appoint, for staggered terms of 3 years, 2 alternate members of such board, in addition to the 5 members above provided for. Annually, the mayor shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate shall act, with full power, only when a member of the board refuses to vote because of interest or when a member is absent. The 2nd alternate shall so act only when the 1st alternate so refuses or is absent or when more than one member of the board so refuses or is absent. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternates.
3. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this section. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.
- 3m. If a quorum is present, the board of appeals may take action under this subsection by a majority vote of the members present.

4. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
5. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with the officer, that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.
6. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. In any action involving a listed property, as defined in s. 44.31 (4), the board shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the planning commission.
7.
 - a. In this subdivision, "area variance" means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this paragraph. In this subdivision, "use variance" means an authorization by the board of appeals under this paragraph for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.
 - b. The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.
 - c. The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.
 - d. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.
 - e. The council of a city may enact an ordinance specifying an expiration date for a variance granted under this subdivision if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of appeals does not specify an expiration date for the variance, a variance granted under this subdivision does not expire unless, at the time it is granted, the board of appeals specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012.
 - f. A variance granted under this subdivision runs with the land.
8. In exercising the above mentioned powers such board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.
10. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by

certiorari. The court shall not stay proceedings upon the decision appealed from, but may, on application, on notice to the board of appeals and on due cause shown, grant a restraining order. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

14. Costs shall not be allowed against the board unless it shall appear to the court that the board acted with gross negligence or in bad faith, or with malice, in making the decision appealed from.

15. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

(ea) *Filing fees.* The common council may by ordinance or resolution establish reasonable fees for the filing of a petition for amendment of the zoning ordinance or official map, or for filing an appeal to the board of appeals.

(em) *Historic preservation.*

1. Subject to subds. 2. and 2m., a city, as an exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, may regulate by ordinance, or if a city contains any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall, not later than 1995, enact an ordinance to regulate, any place, structure or object with a special character, historic, archaeological or aesthetic interest, or other significant value, for the purpose of preserving the place, structure or object and its significant characteristics. Subject to subds. 2., 2m., and 3., a city may create a landmarks commission to designate historic or archaeological landmarks and establish historic districts. Subject to subds. 2. and 2m., the city may regulate, or if the city contains any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall regulate, all historic or archaeological landmarks and all property within each historic district to preserve the historic or archaeological landmarks and property within the district and the character of the district.

2. Before the city designates a historic landmark or establishes a historic district, the city shall hold a public hearing. If the city proposes to designate a place, structure, or object as a historic landmark or establish a historic district that includes a place, structure, or object, the city shall, by 1st class mail, notify the owner of the place, structure, or object of the determination and of the time and place of the public hearing on the determination.

2m. In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this paragraph, a city shall allow an owner to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.

3. An owner of property that is affected by a decision of a city landmarks commission may appeal the decision to the common council. The common council may overturn a decision of the commission by a majority vote of the common council.

(f) *Enforcement and remedies.*

1. The council may provide by ordinance for the enforcement of this section and of any ordinance or regulation made thereunder. In case of a violation of this section or of such ordinance or regulation such council may provide for the punishment by fine and by imprisonment for failure to pay such fine. It is also empowered to provide civil penalties for such violation.

2. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is or is proposed to be used in violation of this section or of any ordinance or other regulation made under authority conferred hereby, the proper authorities of the city, or any adjacent or neighboring property owner who would be specially damaged by such violation may, in addition to other remedies, institute appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about such premises.

(g) *Conflict with other laws.* Wherever the regulations made under authority of this section require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this section shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this section, the provisions of such statute or local ordinance or regulation shall govern.

(gm) *Permits.* Neither the city council, nor the city plan commission, nor the city plan committee of the city council, nor the board of appeals may condition or withhold approval of a permit under this section based upon the

property owner entering into a contract, or discontinuing, modifying, extending, or renewing any contract, with a 3rd party under which the 3rd party is engaging in a lawful use of the property.

(h) *Nonconforming uses.* The continued lawful use of a building, premises, structure, or fixture existing at the time of the adoption or amendment of a zoning ordinance may not be prohibited although the use does not conform with the provisions of the ordinance. The nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building, premises, structure, or fixture shall not during its life exceed 50 percent of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use. If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the ordinance.

(ham) *Manufactured home communities.* Notwithstanding par. (h), a manufactured home community licensed under s. 101.935 that is a legal nonconforming use continues to be a legal nonconforming use notwithstanding the occurrence of any of the following activities within the community:

1. Repair or replacement of homes.
2. Repair or replacement of infrastructure.

(hb) *Repair, rebuilding, and maintenance of certain nonconforming structures.*

1. In this paragraph:
 - a. "Development regulations" means the part of a zoning ordinance that applies to elements including setback, height, lot coverage, and side yard.
 - b. "Nonconforming structure" means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance.
2. An ordinance may not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.

(hc) *Restoration or replacement of certain nonconforming structures.*

1. Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this subsection may not prohibit the restoration or replacement of a nonconforming structure if the structure will be restored to, or replaced at, the size, subject to subd. 2., location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:
 - a. The nonconforming structure was damaged or destroyed on or after March 2, 2006.
 - b. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.
2. An ordinance enacted under this subsection to which subd. 1. applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.

(he) *Antenna facilities.* The governing body of a city may not enact an ordinance or adopt a resolution on or after May 6, 1994, or continue to enforce an ordinance or resolution on or after May 6, 1994, that affects satellite antennas with a diameter of 2 feet or less unless one of the following applies:

1. The ordinance or resolution has a reasonable and clearly defined aesthetic or public health or safety objective.
2. The ordinance or resolution does not impose an unreasonable limitation on, or prevent, the reception of satellite-delivered signals by a satellite antenna with a diameter of 2 feet or less.
3. The ordinance or resolution does not impose costs on a user of a satellite antenna with a diameter of 2 feet or less that exceed 10 percent of the purchase price and installation fee of the antenna and associated equipment.

(hf) *Amateur radio antennas.* The governing body of a city may not enact an ordinance or adopt a resolution on or after April 17, 2002, or continue to enforce an ordinance or resolution on or after April 17, 2002, that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:

1. The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.
2. The ordinance or resolution reasonably accommodates amateur radio communications.

(hg) *Amortization prohibited.*

1. In this paragraph, "amortization ordinance" means an ordinance that allows the continuance of the lawful use of a nonconforming building, premises, structure, or fixture that may be lawfully used as described under par. (h), but only for a specified period of time, after which the lawful use of such building, premises, structure, or fixture must be discontinued without the payment of just compensation.
2. Subject to par. (h), an ordinance enacted under this subsection may not require the removal of a nonconforming building, premises, structure, or fixture by an amortization ordinance.

(hi) *Payday lenders.*

1. In this paragraph:

- a. "Licensee" has the meaning given in s. 138.14 (1) (i).
 - b. "Payday lender" means a business, owned by a licensee, that makes payday loans.
 - c. "Payday loan" has the meaning given in s. 138.14 (1) (k).
2. Except as provided in subds. 3., 4., and 5., no payday lender may operate in a city unless it receives a permit to do so from the city council, and the city council may not issue a permit to a payday lender if any of the following applies:
 - a. The payday lender would be located within 1,500 feet of another payday lender.
 - b. The payday lender would be located within 150 feet of a single-family or 2-family residential zoning district.
 3. A city may regulate payday lenders by enacting a zoning ordinance that contains provisions that are more strict than those specified in subd. 2.
 4. If a city has enacted an ordinance regulating payday lenders that is in effect on January 1, 2011, the ordinance may continue to apply and the city may continue to enforce the ordinance, but only if the ordinance is at least as restrictive as the provisions of subd. 2.
 5. Notwithstanding the provisions of subd. 4., if a payday lender that is doing business on January 1, 2011, from a location that does not comply with the provisions of subd. 2., the payday lender may continue to operate from that location notwithstanding the provisions of subd. 2.
- (hm) *Migrant labor camps.* The council of a city may not enact an ordinance or adopt a resolution that interferes with any repair or expansion of migrant labor camps, as defined in s. 103.90 (3), that are in existence on May 12, 1992, if the repair or expansion is required by an administrative rule promulgated by the department of workforce development under ss. 103.90 to 103.97. An ordinance or resolution of a city that is in effect on May 12, 1992, and that interferes with any repair or expansion of existing migrant labor camps that is required by such an administrative rule is void.
- (i) *Community and other living arrangements.* For purposes of this section, the location of a community living arrangement for adults, as defined in s. 46.03 (22), a community living arrangement for children, as defined in s. 48.743 (1), a foster home, as defined in s. 48.02 (6), or an adult family home, as defined in s. 50.01 (1), in any city shall be subject to the following criteria:
1. No community living arrangement may be established after March 28, 1978 within 2,500 feet, or any lesser distance established by an ordinance of the city, of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the city. Two community living arrangements may be adjacent if the city authorizes that arrangement and if both facilities comprise essential components of a single program.
 2. Community living arrangements shall be permitted in each city without restriction as to the number of facilities, so long as the total capacity of such community living arrangements does not exceed 25 or one percent of the city's population, whichever is greater. When the capacity of the community living arrangements in the city reaches that total, the city may prohibit additional community living arrangements from locating in the city. In any city of the 1st, 2nd, 3rd or 4th class, when the capacity of community living arrangements in an aldermanic district reaches 25 or one percent of the population, whichever is greater, of the district, the city may prohibit additional community living arrangements from being located within the district. Agents of a facility may apply for an exception to the requirements of this subdivision, and such exceptions may be granted at the discretion of the city.
- 2m. A foster home that is the primary domicile of a foster parent and that is licensed under s. 48.62 or an adult family home certified under s. 50.032 (1m) (b) shall be a permitted use in all residential areas and is not subject to subds. 1. and 2. except that foster homes operated by corporations, child welfare agencies, churches, associations, or public agencies shall be subject to subds. 1. and 2.
- 2r.
- a. No adult family home described in s. 50.01 (1) (b) may be established within 2,500 feet, or any lesser distance established by an ordinance of the city, of any other adult family home described in s. 50.01 (1) (b) or any community living arrangement. An agent of an adult family home described in s. 50.01 (1) (b) may apply for an exception to this requirement, and the exception may be granted at the discretion of the city.
 - b. An adult family home described in s. 50.01 (1) (b) that meets the criteria specified in subd. 2r. a. and that is licensed under s. 50.033 (1m) (b) is permitted in the city without restriction as to the number of adult family homes and may locate in any residential zone, without being required to obtain special zoning permission except as provided in subd. 9.
3. In all cases where the community living arrangement has capacity for 8 or fewer persons being served by the program, meets the criteria listed in subds. 1. and 2., and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to locate in any residential zone, without being required to obtain special zoning permission except as provided in subd. 9.
 4. In all cases where the community living arrangement has capacity for 9 to 15 persons being served by the program, meets the criteria listed in subds. 1. and 2., and is licensed, operated, or permitted under the

authority of the department of health services or the department of children and families, that facility is entitled to locate in any residential area except areas zoned exclusively for single-family or 2-family residences except as provided in subd. 9., but is entitled to apply for special zoning permission to locate in those areas. The city may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

5. In all cases where the community living arrangement has capacity for serving 16 or more persons, meets the criteria listed in subds. 1. and 2., and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The city may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.
6. The department of health services shall designate a single subunit within that department to maintain appropriate records indicating the location and number of persons served by each community living arrangement for adults, and such information shall be available to the public. The department of children and families shall designate a single subunit within that department to maintain appropriate records indicating the location and number of persons served by each community living arrangement for children, and such information shall be available to the public.
7. In this paragraph, "special zoning permission" includes but is not limited to the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.
8. The attorney general shall take all necessary action, upon the request of the department of health services or the department of children and families, to enforce compliance with this paragraph.
9. Not less than 11 months nor more than 13 months after the first licensure of an adult family home under s. 50.033 or of a community living arrangement and every year thereafter, the common council of a city in which a licensed adult family home or a community living arrangement is located may make a determination as to the effect of the adult family home or community living arrangement on the health, safety or welfare of the residents of the city. The determination shall be made according to the procedures provided under subd. 10. If the common council determines that the existence in the city of a licensed adult family home or a community living arrangement poses a threat to the health, safety or welfare of the residents of the city, the common council may order the adult family home or community living arrangement to cease operation unless special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the adult family home or community living arrangement. The adult family home or community living arrangement must cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.
- 9m. The fact that an individual with acquired immunodeficiency syndrome or a positive HIV test, as defined in s. 252.01 (2m), resides in a community living arrangement with a capacity for 8 or fewer persons may not be used under subd. 9. to assert or prove that the existence of the community living arrangement in the city poses a threat to the health, safety or welfare of the residents of the city.
10. A determination made under subd. 9. shall be made after a hearing before the common council. The city shall provide at least 30 days' notice to the licensed adult family home or the community living arrangement that such a hearing will be held. At the hearing, the licensed adult family home or the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The common council may call witnesses and may issue subpoenas. All witnesses shall be sworn by the common council. The common council shall take notes of the testimony and shall mark and preserve all exhibits. The common council may, and upon request of the licensed adult family home or the community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the city. Within 20 days after the hearing, the common council shall mail or deliver to the licensed adult family home or the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

